

FPPC *Bulletin*



April 2004

Fair Political Practices Commission

Volume 30, No. 1

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Toll-free Advice Line: 1-866-ASK-FPPC

Public officials, local government filing officers, candidates, lobbyists and others with obligations under the Political Reform Act are encouraged to call toll-free for advice on issues including campaign contributions and expenditures, lobbying and conflicts of interest. *FPPC staff members answer thousands of calls for telephone advice each month.*

FPPC Seeks Comments for Conflict Law Merger Study

FPPC staff members continue to seek public input for their study of proposals to merge Government Code section 1090 and other statutory and Common Law conflict of interest provisions into the Political Reform Act.

A well-attended Interested Persons meeting on the subject was held on January 13 at the FPPC's offices. A second Interested Persons meeting is scheduled for April 7. The Commission also welcomes written comments on this important and interesting topic.

The Political Reform Act was adopted by the voters of California in 1974. A central purpose of the law is to prohibit conflicts of interest caused by an official's financial interest in a decision. However, the Act's conflict of interest law is but one of several conflict of interest prohibitions which currently exist in California.

Several interested parties have requested that the Commission consider sponsoring a legislative proposal that would move some of these other laws into the Act. The amendment would give the Commission regulatory, advice and possibly enforcement authority in these areas in an effort to provide greater continuity in application of these laws and greater service to the public.

As early as 1985, the FPPC has considered the overlap between the Act and section 1090 of the Government Code. Similar to the Act, section 1090 requires disqualification in some circumstances where a conflict of interest exists, and provides more severe consequences than the Act in other circumstances.

More recently, the Bipartisan Commission on the Political Reform Act of 1974 recommended that all state conflict of interest statutes should be consolidated into a single code or body of law to be interpreted and enforced consistently by a single state agency. The Bipartisan Commission found that the existence of multiple conflict of interest provisions "creates unnecessary confusion in the minds of

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**California
Fair Political
Practices Commission****Commissioners**

Liane Randolph, Chair
Philip Blair
Sheridan Downey III
Pamela Karlan
Thomas S. Knox

Commission Meetings

Meetings are generally scheduled monthly in the Commission Hearing Room, 428 J Street, 8th Floor, Sacramento. Please contact the Commission or check the FPPC web site, <http://www.fppc.ca.gov>, to confirm meeting dates.

Pursuant to section 11125 of the Bagley-Keene Open Meeting Act, the FPPC is required to give notice of its meetings ten (10) days in advance of the meeting. In order to allow time for inclusion in the meeting agenda and reproduction, all Stipulation, Decision and Order materials must be received by the FPPC no later than three (3) business days prior to the ten day notice date.

The Commission meeting agenda and supporting documents are available free of charge on the Commission's web site at <http://www.fppc.ca.gov>. Additionally, past and future agendas are posted on the web site.

...Conflict Law Merger Study

(Continued from page 1)

public officials who strive to obey the law but who often have no idea what Code to review or whom to ask for advice."

In March 2000, a second effort to link section 1090 to the Act was initiated by CalPERS. CalPERS convened several meetings with various members of the public, representatives of state agencies, and a representative of the Attorney General's office. Commission staff attended several of these meetings as observers. While the Commission and the Attorney General's office have not committed to any specific approach in dealing with this issue, all attendees agreed that it would be beneficial to have the Commission explore this proposal.

This article is adapted from an FPPC Interested Persons meeting notice. For more information or to offer input on the FPPC's current study, please consider attending an Interested Persons meeting or submitting written comments, and visit the section 1090 study page on our web site at:

www.fppc.ca.gov/index.html?id=432

Future Meeting Dates

The Fair Political Practices Commission currently is planning to meet on the following dates during the remainder of calendar year 2004:

Thursday, April 8
Thursday, May 13
Thursday, June 10
No July meeting
Thursday, August 5
Thursday, September 2
Thursday, October 7
Thursday, November 4
Thursday, December 2

Meetings generally begin at 9:30 a.m. or 9:45 a.m. in the FPPC's 8th floor hearing room at 428 J Street, Sacramento, but check the FPPC web site regularly as dates and times can change.

The FPPC *Bulletin* is published by the Fair Political Practices Commission

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Enforcement hotline: 1-800-561-1861

The *Bulletin* is published quarterly on the FPPC web site. To receive the *Bulletin* by e-mail, use our web site Mailing Lists tool at <http://www.fppc.ca.gov/index.html?id=408>

Web Site Update



By Jon Matthews
FPPC Publications Editor

Several new and informative publications are now available for reading and downloading from the FPPC's web site, www.fppc.ca.gov.

The new publications include two campaign disclosure manuals:

- **Campaign Disclosure Manual 1** is for state candidates, their controlled committees, and primarily formed committees for state candidates
- **Campaign Disclosure Manual 2** is for local candidates, superior court judges, their controlled committees, and primarily formed committees for local candidates

Both manuals are comprehensive in scope and designed to assist candidates for public office in meeting their obligations under the Political Reform Act. Among the subjects discussed in the manuals are candidates' and committees' record keeping requirements, definitions important to campaigns, reporting obligations, and restrictions and prohibitions.

The manuals replaced the previous FPPC "Information Manual A," "Information Manual B," and the 2003 addendum to those manuals.

The new manuals, developed as part of a major FPPC staff project, can be found on our Forms and Manuals page at:

www.fppc.ca.gov/index.html?id=234#2004

A third new publication now available on our web site is the **2004 version of the Political Reform Act of 1974**. The new version, which is updated through January 1, 2004, contains the Act and several appendices including uncoded sections of Proposition 34, a summary of Commission opinions, enforcement decision citations, a summary of enforcement decisions, and a handy index.

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Campaign Disclosure Manual 1

Information for State Candidates, Their Controlled Committees, and Primarily Formed Committees for State Candidates



California Fair Political Practices Commission

Toll-free advice line: 1 (866) ASK-FPPC
Web site: www.fppc.ca.gov

January 2004

Campaign Disclosure Manual 2

Information for Local Candidates, Superior Court Judges, Their Controlled Committees, and Primarily Formed Committees for Local Candidates



California Fair Political Practices Commission

Toll-free advice line: 1 (866) ASK-FPPC
Web site: www.fppc.ca.gov

January 2004

...Web Update

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Please note that the Act is *not* an official publication of the Government Code. It is intended for use by the public and FPPC staff.

To view or download, go to the Political Reform Act page of our web site at:

www.fppc.ca.gov/index.html?id=51

Yet another new publication available on our web site is a pamphlet encouraging public participation in the FPPC Interested Persons process. The "Voicing Your View" publication explains the Interested Persons process and how easy it is for you to participate.

Our Interested Persons process guarantees opportunities for public input at the formative stages of rulemaking. But your point of view may not be heard unless you send us your comments or attend a meeting.

To view or download the new pamphlet, visit the "brochures" section of our Library and Publications page at:

<http://www.fppc.ca.gov/index.html?id=54#brochures>

If you don't have access to a computer, limited printed quantities of our publications are available by calling us toll free at 1-866-ASK-FPPC, or by visiting our downtown Sacramento offices.

Other new or revised publications on our site include:

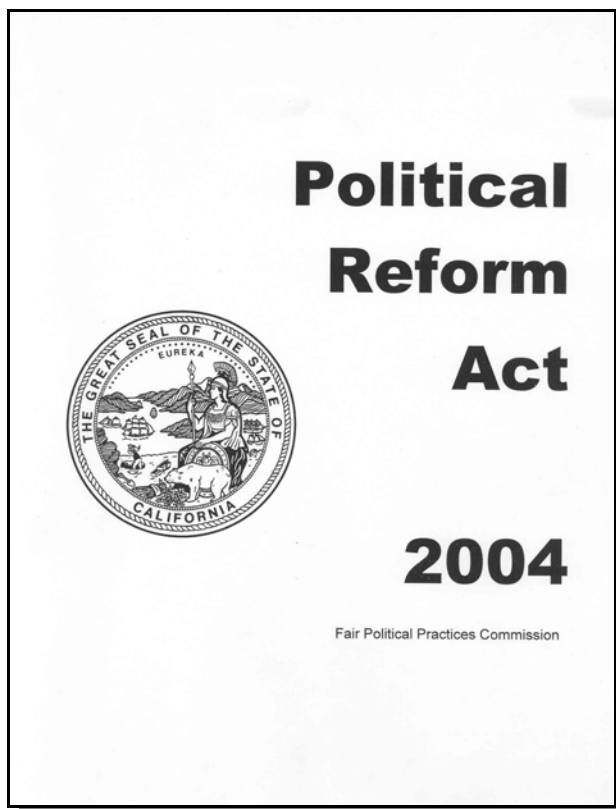
— A revised fact sheet, "Notification to Potential 'Major Donors'" at www.fppc.ca.gov/pdf/MDFactsheet.pdf

— A revised fact sheet, "Holding Two Positions" at www.fppc.ca.gov/index.html?id=215

— The final report of the Bipartisan California Commission on Internet Political Practices, available at: www.fppc.ca.gov/index.html?id=362

Don't forget that the FPPC has expanded its new, automatic system for e-mailing Commission materials, news and notices to interested members of the public, the regulated community and the media. To use the system, simply go to the new FPPC Mailing Lists page at:

<http://www.fppc.ca.gov/index.html?id=408>





The Clerks' Corner

Conflict of Interest Code Review

Updating Your Agency's Conflict of Interest Code

By Adrienne Korchmaros
FPPC Political Reform Consultant

The time is fast approaching when local governmental agencies will be asked to review their conflict of interest codes for continued accuracy. The Political Reform Act requires that, no later than July 1 of each even-numbered year, code reviewing bodies direct their local agencies to submit, by October 1, either a notice of intent to amend their conflict of interest code or a written statement saying that the code is still accurate.

For those of you who are filing officers, perhaps you noticed that certain positions in your agency were not required to file the Form 700 and you believe persons holding those positions should be filing. Or perhaps some positions no longer exist in your agency. These are issues that need to be considered when reviewing your conflict of interest code for changes. Reviewing the code with your agency's personnel director or administrative head might be helpful as you go through the review process.

Another key area for amendment possibilities lies in the disclosure categories assigned to each position. Disclosure categories should be tailored to the duties and responsibilities of the position. For example, perhaps initially when a

position was included in the conflict of interest code, the duties associated with the position appeared to be so broad and indefinable that full disclosure – disclosure of all reportable interests – seemed appropriate. Now, however, you realize that you are able to tie the disclosure to the position duties more accurately. Perhaps, persons in the position are limited to making or participating in making certain decisions, so their disclosure should only include interests likely to be affected by these decisions. For instance, a position required to disclose interests in real property may not, in fact, be involved in decisions relating to real property.

When reviewing your conflict of interest code for changes, it's a good idea to keep in mind that court cases (*City of Carmel-by-the Sea v. Young* and *County of Nevada v. MacMillen*) have decided that a proper conflict of interest code strikes a balance between the need for impartial decision making and an official's privacy interests. A code is properly drafted when it requires officials to report only those interests that may give rise to a conflict.

Remember that staff at the FPPC is always available to assist you as questions arise. We are currently preparing seminars to assist agencies in the conflict of interest code reviewing process. These seminars will be held in Sacramento and elsewhere as our travel budget permits. If your agency is interested in hosting one these seminars, please contact Commission Seminar Coordinator Sonia Rangel at 866-275-3772 or srangel@fppc.ca.gov.

Filing Officers! The FPPC's toll-free advice line is also for you. Call 1-866-ASK-FPPC (1-866-275-3772) with your questions on filing and other issues.

Meeting Summaries

Summaries of actions at the Commission's regular monthly meetings are posted on the Commission's web site at:

<http://www.fppc.ca.gov/index.html?id=63>.

See the following article for a summary of enforcement actions.

Enforcement Summaries

March Commission Meeting

Major Donor Reporting Violations

In the Matter of Lockheed Martin Corporation, FPPC No. 03/492.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.

Lockheed Martin Corporation, a defense and aerospace company headquartered in Arlington, Va., committed one violation of the Political Reform Act by failing to timely file a semi-annual campaign statement, in violation of section 84200, subdivision (b) (1 count). \$2,000 fine.

In the Matter of Larry W. Sonsini, FPPC No. 03/548.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.

Larry W. Sonsini, chairman and chief executive officer of the law firm of Wilson Sonsini Goodrich & Rosati, located in Palo Alto, Calif., committed one violation of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200, subdivision (b) (1 count). \$2,000 fine.

In the Matter of Stewart Alsop, FPPC No. 03/565.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.

Stewart Alsop, general partner with New Enterprise Associates, a venture capital firm located in Redwood City, Calif., committed one violation of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200, subdivision (b) (1 count). \$2,500 fine.

In the Matter of Hiromichi Yamagata, FPPC No. 03/549.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.

Hiromichi Yamagata, an artist who resides in Malibu, Calif., committed one violation of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200, subdivision (b) (1 count). \$2,500 fine.

In the Matter of Twin Med, Inc., FPPC No. 03/553.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.

Twin Med, Inc., a medical supply corporation located in Vernon, Calif., committed one violation of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200, subdivision (b) (1 count). \$2,000 fine.

In the Matter of Kennedy Wilson, Inc., FPPC No. 03/577.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.

Kennedy Wilson, Inc., an international real estate services and fund management corporation located in Beverly Hills, Calif., committed one violation of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200, subdivision (b) (1 count). \$2,000 fine.

In the Matter of Julie E. Smith, FPPC No. 03/685.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.

Julie E. Smith, an administrative assistant at DH

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Smith Company, Inc., located in San Jose, Calif., committed one violation of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200, subdivision (b) (1 count). \$2,000 fine.

In the Matter of Thomas G. McCall, FPPC No. 03/556.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.

Thomas G. McCall, an insurance broker with Lockton Insurance Brokers, Inc., located in Irvine, Calif., committed one violation of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200, subdivision (b) (1 count). \$2,000 fine.

In the Matter of Geoffrey C. Jones, FPPC No. 03/637.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.

Geoffrey C. Jones, a trader with Highlander Asset Management, located in New York, N.Y., committed one violation of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200, subdivision (b) (1 count). \$2,000 fine.

In the Matter of Solange MacArthur, FPPC No. 03/557.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.

Solange MacArthur, a retired resident of Washington, D.C., committed one violation of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200, subdivision (b) (1 count). \$2,000 fine.

In the Matter of Han-Ying Wang, FPPC No. 03/546.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.

Han-Ying Wang, the owner of the Little Sichuan Restaurant located in San Mateo, Calif., committed one violation of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200, subdivision (b) (1 count). \$1,500 fine.

In the Matter of Beverly Hills Properties, FPPC No. 03/561.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.

Beverly Hills Properties, a business entity located in Beverly Hills, Calif., committed two violations of the Act by failing to timely file two semi-annual campaign statements, in violation of section 84200, subdivision (b) (2 counts). \$4,000 fine.

Campaign Reporting Violations

In the Matter of Californians Against Government Run Healthcare, a Committee Against Proposition ____, with Major Funding by Restaurants and Retailers; and Steven Churchwell, FPPC No. 03/847.

Staff: Commission Counsel Julia Bilaver and Political Reform Consultant Wayne Imberi.

Californians Against Government Run Healthcare, a Committee Against Proposition ____, with Major Funding by Restaurants and Retailers, is a state ballot measure committee primarily formed to support a referendum opposing recently enacted Senate Bill 2. Steven Churchwell serves as the treasurer of the committee. In this matter, respondents failed to file electronic reports disclosing 10 contributions of \$5,000 or more, in violation of section 85309, subdivision (d) (10 counts). \$25,000 fine.

In the Matter of David Rosenaur and Export International, FPPC No. 99/344.

Staff: Commission Counsel Jeffery A. Sly and Investigator III Jon Wroten.

David Rosenaur was the proponent of Measure F, a measure that appeared on the Nov. 3, 1998, general election ballot in the Town of Loomis. Export International, Inc., is a California corporation wholly owned by Rosenaur. Respondents committed eight violations of the Act by: failing to timely file pre-election campaign statements, in violation of section 84200.5, subdivision (f) (2 counts); failing to file supplemental independent expenditure reports, in violation of section 84203.5 (3 counts); failing to file late independent expenditure reports, in violation of section 84204, subdivision (a) (2 counts); and failing to

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file a semi-annual campaign statement, in violation of section 84200, subdivision (b) (1 count). \$11,000 fine.

In the Matter of Mike Matsuda and Mike Matsuda for Assembly, FPPC No. 00/158.

Staff: Commission Counsel William L. Williams, Jr. and Investigator III Jon Wroten.
Mike Matsuda and Mike Matsuda for Assembly violated the Act by failing to maintain the detailed accounts, records, bills, and receipts necessary to prepare campaign statements and to comply with the campaign reporting provisions of the Act, in violation of section 84104 (1 Count). \$2,000 fine.

Late Contribution -- Streamlined Program

Failure to Timely File Late Contribution Reports – Proactive Program.

Staff: Chief Investigator Alan Herndon and Investigator III Jon Wroten.

The following persons and entities have entered into stipulations for failure to file late contribution reports in 2002, in violation of section 84203:

- **In the Matter of Jerome Moss, FPPC No. 2003-826.**
Jerome Moss of Beverly Hills, Calif., failed to timely disclose a late contribution totaling \$10,000 (1 count). \$1,500 fine.
- **In the Matter of Brian Devine, FPPC No. 2003-840.**
Brian Devine of Rancho Santa Fe, Calif., failed to timely disclose a late contribution totaling \$10,000 (1 count). \$1,500 fine.
- **In the Matter of Beamhit, LLC, FPPC No. 2003-842.**
Beamhit, LLC of Columbia, Md., failed to timely disclose a late contribution totaling \$10,000 (1 count). \$1,500 fine.

ALJ Decision

In the Matter of California Independent Business Political Action Committee and Charles H. Bell, Jr., FPPC No. 99/195.

Staff: Senior Commission Counsel Melodee A. Mathay and Supervising Investigator Sue Straine.

California Independent Business Political Action Committee (CIB-PAC) is a general purpose recipient committee. Charles H. Bell, Jr. is CIB-PAC's treasurer. CIB-PAC's four contributors are located in Southern California, and the committee is located in Sacramento. In this matter, it is alleged that CIB-PAC and Bell violated the mass mailing sender identification provisions of section 84305 in March 1996, by paying for and sending eight political mass mailings that opposed incumbent Assemblyman Brian Setencich in the 30th Assembly District primary election, and/or supported his challenger, Robert Prenter. All eight mass mailings failed to disclose CIB-PAC as the sender of the mailings. Following an administrative hearing, Administrative Law Judge Jaime René Román issued a proposed decision finding that eight violations occurred. The Commission rejected the proposed ALJ decision in its entirety and will hold a hearing on the matter.

February Commission Meeting

Major Donor Violations

In the Matter of Kidspart, FPPC No. 01/241.

Staff: Commission Counsel William J. Lenkeit.
Kidspart, a limited liability company based in Oakland and a major donor committee, committed one violation of the Political Reform Act by failing to timely file a semi-annual campaign statement, in violation of section 84200(b) (1 count). \$1,200 fine.

In the Matter of James W. Jacobs, FPPC No. 03/493.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.
James W. Jacobs, vice chairman of NetJets, Inc, a major donor committee located in Woodbridge,

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N.J., committed one violation of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200(b) (1 count). \$2,500 fine.

In the Matter of Martin Enterprises, FPPC No. 03/279.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.
Martin Enterprises, a limited liability business entity and major donor committee engaged in the tax and insurance industries, located in Santa Ana, committed two violations of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200, subdivision (b) (1 count), and by failing to file a semi-annual campaign statement electronically, in violation of section 84605(a) (1 count). \$6,000 fine.

SEI Violation

In the Matter of Douglas Hoopes, FPPC No. 02/690.

Staff: Commission Counsel Jeffery A. Sly and SEI Coordinator Mary Ann Kvasager.
Douglas Hoopes, a member of the Imperial County Planning Commission, failed to timely file a 2001 annual Statement of Economic Interests, in violation of section 87203 (1 count). \$200 fine.

Late Contribution -- Streamlined Program

Failure to Timely File Late Contribution Reports – Proactive Program.

Staff: Chief Investigator Alan Herndon and Investigator III Jon Wroten.

The following persons and entities have entered into stipulations for failure to file late contribution reports in 2002, in violation of section 84203:

- **In the Matter of Liquidity Financial Group, FPPC No. 2003-822.**
Liquidity Financial Group of Pleasanton, Calif., failed to timely disclose a late contribution totaling \$10,000 (1 count). \$1,500 fine.
- **In the Matter of Laurie F. Michaels, FPPC No. 2003-824.**
Laurie F. Michaels of Woody Creek, Colo.,

failed to timely disclose a late contribution totaling \$10,000 (1 count). \$1,500 fine.

- **In the Matter of Gaye E. Morgenthaler, FPPC No. 2003-825.**
Gaye E. Morgenthaler of Woodside, Calif., failed to timely disclose late contributions totaling \$34,181.72 (2 counts). \$5,127.26 fine.
- **In the Matter of PAC to the Future, FPPC No. 2003-827.**
PAC to the Future of San Francisco, Calif., failed to timely disclose a late contribution totaling \$10,000 (1 count). \$1,500 fine.
- **In the Matter of Jeffery A. Rich, FPPC No. 2003-828.**
Jeffery A. Rich of Dallas, Tex., failed to timely disclose a late contribution totaling \$10,000 (1 count). \$1,500 fine.
- **In the Matter of Richard Sandler, FPPC No. 2003-829.**
Richard Sandler of Los Angeles, Calif., failed to timely disclose a late contribution totaling \$10,000 (1 count). \$1,500 fine.
- **In the Matter of Washington Mutual Bank, FA, FPPC No. 2003-831.**
Washington Mutual Bank, FA of Seattle, Wash., failed to timely disclose late contributions totaling \$20,000 (3 counts). \$3,000 fine.
- **In the Matter of Z Valet, FPPC No. 2003-833.**
Z Valet of Los Angeles, Calif., failed to timely disclose a late contribution totaling \$15,000 (1 count). \$2,250 fine.
- **In the Matter of Nicholas J. Bouras, FPPC No. 2003-836.**
Nicholas J. Bouras of Summit, N.J., failed to timely disclose a late contribution totaling \$10,000 (1 count). \$1,500 fine.
- **In the Matter of Brown & Caldwell, FPPC No. 2003-837.**
Brown & Caldwell of Walnut Creek, Calif., failed to timely disclose a late contribution totaling \$10,000 (1 count). \$1,500 fine.

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- **In the Matter of ACS State & Local Solutions, FPPC No. 2003-838.**
ACS State & Local Solutions of Washington, D.C., failed to timely disclose late contributions totaling \$14,200 (5 counts) \$3,550 fine.
- **In the Matter of Elegance Corporation, FPPC No. 2003-841.**
Elegance Corporation of City of Industry, Calif., failed to timely disclose a late contribution totaling \$10,000 (1 count). \$1,500 fine.

January Commission Meeting

ALJ Decision

In the Matter of James Lotter, FPPC No. 01/276.

Staff: Commission Counsel Elizabeth K. Conti and Investigator Bonnie Swaim.
James Lotter was a member of the Gualala Municipal Advisory Council. The Commission issued an Accusation alleging that Lotter failed to timely file one Statement of Economic Interests, in violation of Government Code Section 87300. Following a hearing, Administrative Law Judge Muriel Evens issued a proposed decision finding that Lotter failed to timely file one Statement of Economic Interests. The commission accepted the proposed decision in its entirety (1 count). \$500 fine.

Campaign Reporting Violations

In the Matter of Plaza Cleaning Service Company, L.P., FPPC No. 02/1044.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.
Plaza Cleaning Service Company, L.P., a New York domestic limited partnership headquartered in New York, N.Y., committed two violations of the Act by failing to disclose a late contribution, in violation of section 84203(a) (1 count), and failing to file a semi-annual campaign statement, in violation of section 84200(b) (1 count). \$4,000 fine.

In the Matter of Merri Jean Ross, FPPC No. 03/552.

Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten.

Merri Jean Ross, a homemaker who resides in Beverly Hills, committed one violation of the Act by failing to timely file a semi-annual campaign statement, in violation of section 84200(b) (1 count). \$2,000 fine.

SEI Violations

In the Matter of Byron Wear, FPPC No. 00/391.

Staff: Commission Counsel Steven Meinrath and Supervising Investigator Dennis Pellon.
Byron Wear, a member of the San Diego City Council, failed to disclose an outstanding loan on his annual Statements of Economic Interests, in violation of sections 87200 and 87207 (3 counts). \$7,000 fine.

In the Matter of Suzanne Levoe, FPPC No. 01/434.

Staff: Commission Counsel Elizabeth K. Conti and Investigator III Dan Schek.
Suzanne Levoe, former member of the City of Sierra Madre Planning Commission, failed to timely file 2001 and 2002 annual Statements of Economic Interests, in violation of section 87203 (2 counts). \$2,000 fine.

In the Matter of Robert McAdoo, FPPC No. 02/369.

Staff: Commission Counsel Jeffery A. Sly and SEI Coordinator Mary Ann Kvasager.
Robert McAdoo, a member of the board of directors for the Ukiah Valley Fire Protection District in Mendocino County, Calif., failed to timely file a 2001 annual Statement of Economic Interests, in violation of section 87300 (1 count). \$1,500 fine.

In the Matter of Robert Meyerson, FPPC No. 02/596.

Staff: Commission Counsel Jeffery A. Sly and SEI Coordinator Mary Ann Kvasager.
Robert Meyerson, a member of the Dental Examiners Board for the California Department of Consumer Affairs, failed to timely file a 2001 an-

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nual Statement of Economic Interests, in violation of section 87300 (1 count). \$200 fine.

**In the Matter of Gilbert Otero,
FPPC No. 02/691.**

Staff: Commission Counsel Jeffery A. Sly and SEI Coordinator Mary Ann Kvasager. Gilbert Otero, District Attorney of Imperial County, Calif., failed to timely file a 2001 annual Statement of Economic Interests, in violation of section 87203 (1 count). \$200 fine.

**In the Matter of Michael Brooks,
FPPC No. 02/619.**

Staff: Commission Counsel Jeffery A. Sly and SEI Coordinator Mary Ann Kvasager. Michael Brooks, a member of the Planning Commission for the City of Hughson, Calif., failed to timely file a 2001 annual Statement of Economic Interests, in violation of section 87203 (1 count). \$200 fine.

Major Donor – Streamlined Procedure

Failure to Timely File Major Donor Campaign Statements.

Staff: Chief Investigator Alan Herndon, Investigator III Jon Wroten, and Political Reform Consultant Mary Ann Kvasager. The following persons and entities have entered into stipulations for failing to file major-donor campaign statements that were due during the calendar year of 2002, in violation of Government Code Section 84200:

- **In the Matter of Kathy Levinson, FPPC No. 2003-578.**
Kathy Levinson of Palo Alto, Calif., failed to timely disclose contributions totaling \$11,500 (2 counts). \$1,725 fine.
- **In the Matter of J. Brian Thebault, FPPC No. 2003-587.**
J. Brian Thebault of New Vernon, N.J., failed to timely disclose contributions totaling \$10,000 (1 count). \$1,500 fine.

Late Contribution – Streamlined Program

Failure to Timely File Late Contribution Reports – Proactive Program.

Staff: Chief Investigator Alan Herndon and Investigator III Jon Wroten.

The following persons and entities have entered into stipulations for failure to file late-contribution reports in 2002, in violation of Government Code Section 84203:

- **In the Matter of John P. Manning, FPPC No. 2003-823.**
John P. Manning of Boston, Mass., failed to timely disclose a late contribution totaling \$10,000.00 (1 count). \$1,500 fine.
- **In the Matter of Richard Del Piero, FPPC No. 2003-839.**
Richard Del Piero of Watsonville, Calif., failed to timely disclose late contributions totaling \$14,400.00 (3 counts). \$2,160 fine.

December Commission Meeting

Default Decision and Order

In the Matter of Agapito Fajardo, Friends of Pete Fajardo, and Natividad Odal, FPPC No. 97/046. Staff: Commission Counsel Julia Bilaver and Investigator III Sandra Buckner. The commission issued a Default Decision and Order regarding Agapito Fajardo, a successful candidate for mayor of the City of Carson, Friends of Pete Fajardo, the controlled committee of Agapito Fajardo, and Natividad Odal, treasurer of Friends of Pete Fajardo. In this matter, Respondents accepted cash loans, in violation of section 84300, subdivision (a) (two counts); failed to report required information about contributors during five separate reporting periods, in violation of Section 84211 subdivision (f) (five counts); failed to report required information about campaign expenditures during five separate reporting periods, in violation of Section 84211, subdivision (k) (five counts); made campaign expenditures in cash, in violation of Section 84300, subdivision (b) (one

(Continued on page 12)

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count); made campaign expenditures from a bank account other than the campaign bank account, in violation of Section 85201, subdivision (e) (one count); failed to report required lender information for two loans, in violation of section 84211, subdivision (g) (two counts); deposited contributions into an account other than the campaign bank account, in violation of section 85201, subdivision (c) (one count), and failed to report required information about campaign expenditures made by agents, in violation of section 84303 (one count). (18 counts.) \$36,000 fine.

Late Contribution Reporting Violations

In the Matter of the Law Firm of Joseph M. Alioto, FPPC No. 02/782. Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten. The Law Firm of Joseph M. Alioto, located in San Francisco, failed to disclose, in a late contribution report, a \$15,000 late contribution to the Alioto for Secretary of State Committee, in violation of Government Code Section 84203(a) (1 count). \$2,250 fine.

Campaign Reporting Violations

In the Matter of California Pro-Life Council, Inc. PAC and James Mathwig, FPPC No. 01/182. Staff: Senior Commission Counsel Melodee A. Mathay and Investigator III Jon Wroten. California Pro-Life Council, Inc. PAC, a state general purpose recipient committee, sponsored by the California Pro-Life Council, Inc., located in Sacramento County, and James Mathwig, treasurer for the committee, failed to timely disclose eight late independent expenditures in properly filed late independent expenditure reports prior to the 1998 primary and general elections, in violation of Section 84204 (a) (8 counts). \$11,000 fine.

In the Matter of Lou Lopez, Lou Lopez for Supervisor and Sheri Schwabe, FPPC No. 02/909. Staff: Commission Counsel Jennie Eddy and Investigator III Leon Nurse-Williams. Lou Lopez, an unsuccessful candidate for a seat on the Orange County Board of Supervisors in the Nov.

3, 1998, general election, Lou Lopez for Supervisor, his controlled committee, and Sheri Schwabe, treasurer of the committee, committed seven violations of the Act by failing to keep the required campaign records necessary to prepare two campaign statements, in violation of section 84104 of the Government Code (2 counts), and failing to disclose five late contributions, in violation of Government Code Section 84203(a) (5 counts). \$6,500 fine.

In the Matter of Donna Casey and Casey for Supervisor '98, FPPC No. 00/854. Staff: Commission Counsel William L. Williams, Jr. and Accounting Specialist William Marland. Donna Casey and Casey for Supervisor '98 of San Francisco committed four violations of the Political Reform Act by failing to disclose all expenditures of \$100 or more on campaign statements, in violation of section 84211, subdivision (j)(1)-(4) of the Government Code (2 counts); and by failing to report the total amount of expenditures made to persons who received \$100 or more, in violation of section 84211, subdivision (h) of the Government Code (2 counts). \$6,000 fine.

In the Matter of Scott Cook, FPPC No. 01/235. Staff: Commission Counsel William L. Williams, Jr. and Investigator III Jon Wroten. Scott Cook of Woodside, Calif., committed four violations of the Political Reform Act by failing to file two major donor committee campaign statements, in violation of section 84200, subdivision (b) of the Government Code (2 counts), and by failing to electronically file two major donor committee campaign statements, in violation of section 84605, subdivision (a) of the Government Code (2 counts). \$12,000 fine.

In the Matter of Elizabeth J. Cabraser, FPPC No. 03/383. Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten. Elizabeth J. Cabraser, a partner in the law firm of Lieff, Cabraser, Heimann & Bernstein, LLP, in San Francisco, committed three violations of the Act by failing to timely file two semi-annual campaign statements, in violation of Government Code Section 84200(b) (2 counts), and by failing to file a semi-annual campaign statement elec-

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tronically, in violation of Government Code Section 84605(a) (1 count). \$12,000 fine.

In the Matter of Ram Development, Inc., FPPC No. 03/467. Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten. Ram Development, Inc., a corporation engaged in real estate development, located in San Francisco, committed two violations of the Act by failing to timely file a semi-annual campaign statement, in violation of Government Code Section 84200(b) (1 count), and by failing to file a semi-annual campaign statement electronically, in violation of Government Code Section 84605(a) (1 count). \$6,000 fine.

In the Matter of Richard T. Santulli, FPPC No. 03/497. Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten. Richard T. Santulli, chairman and chief executive officer of NetJets, Inc., headquartered in Woodbridge, N.J., committed two violations of the Act by failing to timely file a semi-annual campaign statement, in violation of Government Code Section 84200(b) (1 count), and by failing to file a semi-annual campaign statement electronically, in violation of Government Code Section 84605(a) (1 count). \$6,000 fine.

In the Matter of Daniel D. Villanueva, FPPC No. 03/495. Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten. Daniel D. Villanueva, chairman of Villanueva Capital Corp., located in Los Angeles, committed two violations of the Act by failing to timely file a semi-annual campaign statement, in violation of Section 84200, subdivision (b) (1 count), and by failing to file a semi-annual campaign statement electronically, in violation of Government Code Section 84605(a) (1 count). \$6,000 fine.

In the Matter of Beazer Homes USA, Inc., FPPC No. 03/496. Staff: Commission Counsel Jennie Eddy and Investigator III Jon Wroten. Beazer Homes USA, Inc., a corporation engaged in the building and selling of single-family residences, headquartered in Atlanta, Ga. committed two violations of the Act by failing to timely file a semi-annual campaign statement, in viola-

tion of Government Code Section 84200(b) (1 count), and by failing to file a semi-annual campaign statement electronically, in violation of Government Code Section 84605(a) (1 count). \$6,000 fine.

In the Matter of Riverside County Business & Property Owners Coalition and Daralyn Reed, FPPC No. 02/152. Staff: Senior Commission Counsel Deanne Canar and Supervising Investigator Dennis Pellon. Riverside County Business & Property Owners Coalition ("Riverside Coalition"), a committee that existed primarily to support a group of specific candidates being voted upon in the Nov. 4, 1997, election in the City of Perris, and Daralyn Reed, treasurer of the Riverside Coalition, failed to file an amended statement of organization, within 10 days of a change in the primary activity of the Riverside Coalition, in violation of Section 84103, subdivision (a) (1 count), and failed to file a semi-annual campaign statement, for the reporting period Jan. 1 through Dec. 31, 1997, in the correct location, in violation of Section 84215, subdivision (e) (1 count). \$4,000 fine.

SEI Violations

In the Matter of Barbara Keyani, FPPC No. 03/032. Staff: Commission Counsel Elizabeth K. Conti. Barbara Keyani, coordinator of special projects and communications for the Santa Barbara School District and the Santa Barbara High School District, failed to disclose a source of income on her 2001 and 2002 annual Statements of Economic Interests, in violation of Section 87300 (2 counts). \$3,000 fine.

In the Matter of Thomas Campbell, FPPC No. 02/462. Staff: Commission Counsel Jeffery A. Sly and SEI Coordinator Mary Ann Kvasager. Thomas Campbell, mayor of the City of Solana Beach, failed to timely file a 2001 annual Statement of Economic Interests, in violation of Government Code section 87203 (1 count). \$600 fine.

In the Matter of Jeff S. Coffman, FPPC No. 01/304. Staff: Commission Counsel William J. Lenkeit and Investigator III Dan Schek. Jeff

(Continued on page 14)

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Coffman, an appointed member of the Redevelopment Design Review Committee for the City of Fullerton, failed to timely file a 2001 annual Statement of Economic Interests, in violation of Government Code section 87300 (1 count). \$800 fine.

Major Donor - Streamlined Procedure

Failure to Timely File Major Donor Campaign Statements. Staff: Chief Investigator Alan Hernon, Investigator III Jon Wroten, and Political Reform Consultant Mary Ann Kvasager. The following persons and entities have entered into stipulations for failing to file major donor campaign statements that were due during the calendar year of 2002, in violation of Government Code Section 84200:

- **In the Matter of Peter Morton, FPPC No. 2003-582.** Peter Morton of Los Angeles, California failed to timely disclose contributions totaling \$36,000 (1 count). \$5,000 fine.
- **In the Matter of Basic Resources, Inc., FPPC No. 2003-567.** Basic Resources, Inc. of Modesto, California failed to timely disclose contributions totaling \$25,000 (1 count). \$400 fine.
- **In the Matter of Berger & Montague, P.C., FPPC No. 2003-568.** Berger & Montague, P. C. of Philadelphia, Pennsylvania failed to timely disclose contributions totaling \$10,000 (1 count). \$1,500 fine.
- **In the Matter of Harvey Weinstein, FPPC No. 2003-588.** Harvey Weinstein of New York, N.Y., failed to timely disclose contributions totaling \$11,000 (1 count). \$1,650 fine.
- **In the Matter of Digital Campaigns, Inc., FPPC No. 2003-575.** Digital Campaigns, Inc. of Palo Alto, Calif., failed to timely disclose contributions totaling \$10,200 (1 count). \$1,530 fine.
- **In the Matter of Recording Artists' Coalition, FPPC No. 2003-585.** Recording Artists'

Coalition of Santa Monica, Calif., failed to timely disclose contributions totaling \$16,950 (1 count). \$2,542.50 fine.

- **In the Matter of Delores Pistacchio, FPPC No. 2003-584.** Delores Pistacchio of Fresno, Calif., failed to timely disclose contributions totaling \$15,000 (1 count). \$2,250 fine.
- **In the Matter of Marcus A. Moreno, FPPC No. 2003-581.** Marcus A. Moreno of Whittier, Calif., failed to timely disclose contributions totaling \$15,000 (1 count). \$2,250 fine.
- **In the Matter of New Images of Beverly Hills, FPPC No. 2003-583.** New Images of Beverly Hills of Beverly Hills, Calif., failed to timely disclose contributions totaling \$18,000 (1 count). \$2,700 fine.
- **In the Matter of Robert Lorsch, FPPC No. 2003-640.** Robert Lorsch of Beverly Hills, Calif., failed to timely disclose contributions totaling \$18,000 (2 counts). \$1,600 fine.
- **In the Matter of Louise Gund, FPPC No. 2003-639.** Louise Gund of Berkeley, Calif., failed to timely disclose contributions totaling \$10,000 (1 count). \$800 fine.
- **In the Matter of Hank Asher, FPPC No. 2003-566.** Hank Asher of Boca Raton, Fla., failed to timely disclose contributions totaling \$10,000 (1 count). \$1,500 fine.
- **In the Matter of Phoebus Consultants, LLC, FPPC No. 2003-641.** Phoebus Consultants of Burbank, Calif., failed to timely disclose contributions totaling \$15,000 (1 count). \$400 fine.
- **In the Matter of Capitol Records, Inc./EMI Recorded Music, North America, FPPC No. 2003-571.** Capitol Records, Inc./EMI Recorded Music, North America of New York, N.Y., failed to timely disclose contributions totaling \$40,000 (1 count). \$5,000 fine.
- **In the Matter of Shehadey Properties, FPPC No. 2003-586.** Shehadey Properties of

(Continued on page 15)

(Continued from page 14)

Fresno, Calif., failed to timely disclose contributions totaling \$12,100 (1 count). \$1,815 fine.

- **In the Matter of Harlan R. Crow, FPPC No. 2003-574.** Harlan R. Crow of Dallas, Tex., failed to timely disclose contributions totaling \$15,000 (1 count). \$400 fine.

Failure to Timely File Major Donor Campaign Statements. Staff: Chief Investigator Alan Hernon, Investigator III Jon Wroten, and Political Reform Consultant Mary Ann Kvasager. The following persons and entities have entered into stipulations for failing to file major donor campaign statements that were due during the calendar year of 2000, in violation of Government Code Section 84200, and failing to electronically file major donor statements for the calendar year 2000, in violation of Government Code Section 84605:

- **In the Matter of John Paul Talty & Affiliated Entities, FPPC No. 2003-459.** John Paul Talty & Affiliated Entities of San Francisco, Calif., failed to timely disclose contributions totaling \$62,000 (1 count). \$1,020 fine.

FPPC Is Updating Manual For Lobbyists

Good news for those of you involved in lobbying state agencies!

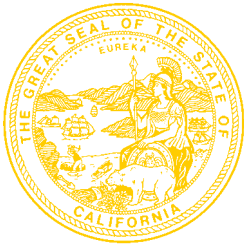
Commission staff members are hard at work updating the Lobbying Manual and anticipate holding meetings for interested persons in the summer of 2004. We invite your attendance and comments and hope to draft a revised manual that better serves your needs.



For information regarding the Lobbying Manual as it is updated, check the "What's New at the FPPC" section on our website. You may also want to add your name to our e-mail subscription service.



**FPPC
Toll-free Advice Line:
1-866-ASK-FPPC
(1-866-275-3772)**



Our 29th Year of Service

The FPPC Tackled Heavy Workload in 2003, Launched New Initiatives, Encouraged Public Participation and Feedback

The Fair Political Practices Commission is a bipartisan, independent panel of five members that is responsible for administering and enforcing the Political Reform Act's rules on conflicts of interest, campaign contributions and expenditures and lobbying disclosure.

The year 2003 brought the Commission and its supporting staff an extensive workload and many challenges in all of these areas. But our agency, striving to make the most efficient use of limited resources, also launched new initiatives to further advance our mission of service to Californians and their government.

Among these initiatives was a project to publish new campaign disclosure manuals, further implementation of Proposition 34, and a redoubling of our efforts to seek input and feedback from the regulated community and the public in the formative stages of our rule-making process.

The Commission, created by a vote of the people through a 1974 initiative, began operation in 1975 and marked its 29th year of service in 2003. Our regulated community includes tens of thousands of state and local government officials and designated employees, as well as state and local candidates, campaign committees and major donors, and lobbyists.

The FPPC is one of the smaller state agencies. We have a staff of 69 employees and a 2003-04 fiscal year budget of approximately \$6.5 million. The Chair of the Commission serves full time and is salaried, while the four other commissioners serve part time and receive a modest stipend for each monthly meeting.

Joining the Commission in 2003 are a new chairperson, former municipal attorney and former FPPC counsel Liane Randolph, and

two new commissioners -- Stanford University law Professor Pamela Karlan and San Diego businessman Philip Blair.

The five-member Commission, as is traditional, conducted the vast majority of its formal



FPPC Political Reform Consultants Cynthia Jones, left, and Teri Rindahl are among our staff members who lead seminars for Statement of Economic Interests filing officers from other state and local government agencies. The seminars feature informative PowerPoint presentations and extensive opportunities for questions and answers.

business at monthly, public meetings at the FPPC's downtown Sacramento hearing room. The Commission had over 200 agenda items before it during its 2003 meetings, requiring extensive preparations and review of documents by the commissioners prior to each meeting.

The following are some of the major highlights

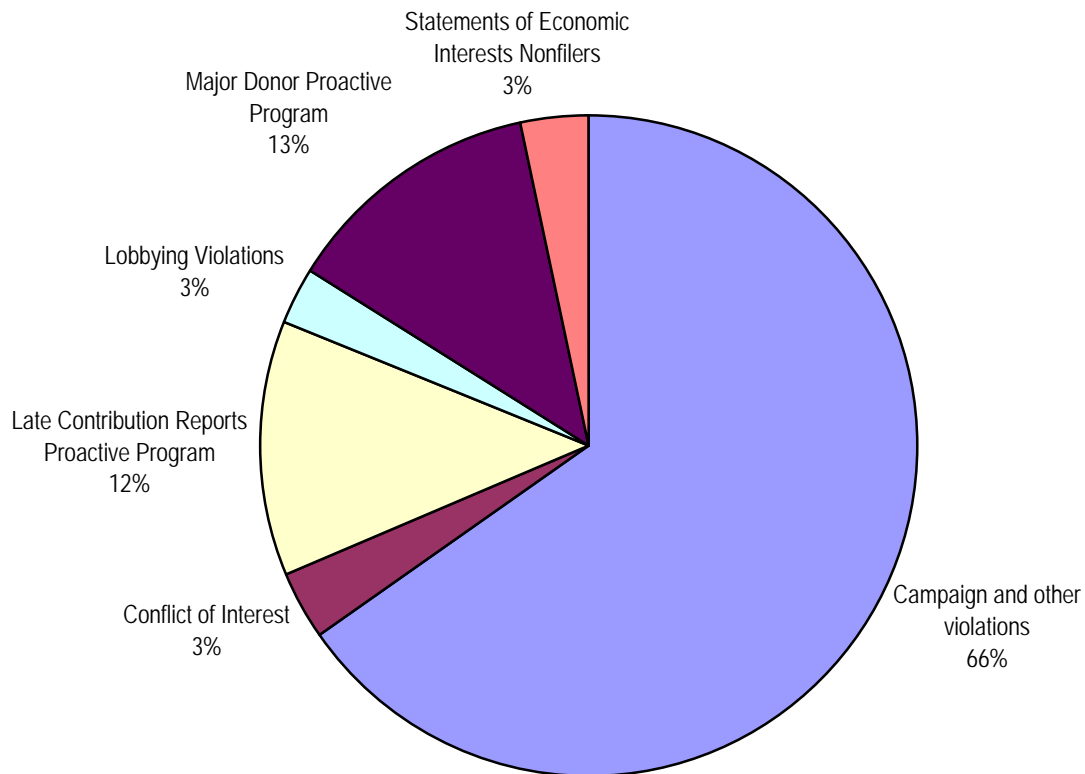
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FPPC Enforcement Actions
Summary of Fines Assessed and Imposed
1975 through 2003

| Year | Administrative Actions | | | | Civil Judgments | |
|---------------|-------------------------------|-----------------------|---------------------|----------------------|------------------------|-----------------------|
| | Cases | Fines Assessed | Fines Waived | Fines Imposed | Cases | Fines Assessed |
| 1975 | 0 | \$0 | \$0 | \$0 | 0 | \$0 |
| 1976 | 11 | \$1,400 | \$500 | \$900 | 0 | \$0 |
| 1977 | 1 | \$4,000 | \$0 | \$4,000 | 0 | \$0 |
| 1978 | 1 | \$4,500 | \$0 | \$4,500 | 2 | \$25,250 |
| 1979 | 8 | \$6,820 | \$0 | \$6,820 | 2 | \$6,500 |
| 1980 | 18 | \$79,600 | \$35,950 | \$43,650 | 1 | \$1,000 |
| 1981 | 5 | \$14,600 | \$3,000 | \$11,600 | 2 | \$5,000 |
| 1982 | 10 | \$57,500 | \$10,750 | \$46,750 | 0 | \$0 |
| 1983 | 5 | \$71,100 | \$12,500 | \$58,600 | 1 | \$1,250 |
| 1984 | 15 | \$72,200 | \$4,000 | \$68,200 | 0 | \$0 |
| 1985 | 7 | \$24,750 | \$5,000 | \$19,750 | 1 | \$9,000 |
| 1986 | 12 | \$37,400 | \$1,250 | \$36,150 | 0 | \$0 |
| 1987 | 22 | \$97,900 | \$6,000 | \$91,900 | 0 | \$0 |
| 1988 | 34 | \$154,600 | \$10,500 | \$144,100 | 3 | \$367,500 |
| 1989 | 35 | \$182,250 | \$0 | \$182,250 | 0 | \$0 |
| 1990 | 36 | \$219,000 | \$0 | \$219,000 | 0 | \$0 |
| 1991 | 39 | \$463,550 | \$0 | \$463,550 | 3 | \$235,000 |
| 1992 | 44 | \$276,450 | \$0 | \$276,450 | 3 | \$415,000 |
| 1993 | 36 | \$833,050 | \$0 | \$833,050 | 1 | \$772,000 |
| 1994 | 30 | \$656,800 | \$0 | \$656,800 | 1 | \$85,000 |
| 1995 | 51 | \$1,698,050 | \$0 | \$1,698,050 | 0 | \$0 |
| 1996 | 56 | \$1,026,221 | \$0 | \$1,026,221 | 0 | \$0 |
| 1997 | 54 | \$912,650 | \$0 | \$912,650 | 2 | \$47,000 |
| 1998 | 96 | \$1,190,710 | \$0 | \$1,190,710 | 7 | \$95,490 |
| 1999 | 63 | \$968,500 | \$0 | \$968,500 | 5 | \$309,900 |
| 2000 | 174 | \$554,037 | \$0 | \$554,037 | 1 | \$9,100 |
| 2001 | 158 | \$595,000 | \$0 | \$595,000 | 2 | \$83,000 |
| 2002 | 143 | \$1,007,836 | \$0 | \$1,007,836 | 4 | \$119,000 |
| 2003 | 256 | \$693,734 | \$0 | \$693,734 | 2 | \$105,000 |
| TOTALS | 1,420 | \$11,904,207 | \$89,450 | \$11,814,757 | 43 | \$2,690,990 |

2003 Total Enforcement Fines—\$798,734

Fines By Type of Violation



Administrative and Civil Settlements—2003

| <i>TYPE OF VIOLATION:</i> | <i>Fines</i> | <i>No. of Cases</i> | <i>Case %</i> | <i>Fine %</i> |
|---|------------------|---------------------|---------------|---------------|
| Campaign and other violations | \$520,400 | 46 | 18% | 66% |
| Conflict of Interest | \$27,500 | 3 | 1% | 3% |
| Late Contribution Reports Proactive Program | \$99,253 | 35 | 14% | 12% |
| Lobbying Violations | \$24,000 | 2 | 1% | 3% |
| Major Donor Proactive Program | \$100,381 | 142 | 54% | 13% |
| Statements of Economic Interests Nonfilers | \$27,200 | 30 | 12% | 3% |
| Total | \$798,734 | 258 | 100% | 100% |

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of the FPPC's work in 2003:

Enforcing the law

The FPPC's Enforcement Division opened 892 enforcement case files in 2003. The division completed prosecution of 258 cases, compared to 147 cases prosecuted in 2002. The Commission assessed nearly \$800,000 in administrative and civil fines in 2003 (please see the charts accompanying this article for details).

Of these cases, 54 percent stemmed from our Major Donor Proactive Program, 18 percent involved campaign and other violations, 14 percent resulted from our Late Contribution Reports Proactive Program, 12 percent involved Statements of Economic Interests non-filers, and one percent each resulted from conflict of interest prosecutions and lobbying violation cases.

The special proactive programs used by the Enforcement Division result in expedited prosecutions and public disclosure. The division strives to educate and alert respondents with the goal of preventing additional violations of the Political Reform Act in the future.

The 2003 fines brought the cumulative total of FPPC fines to \$14,595,198, combined administrative and civil, since the agency began operation in 1975.

While many enforcement cases are resolved through stipulated settlement agreements, some cases involve complex and lengthy litigation before the civil courts. Attorneys and other staff from the Legal Division and Enforcement Division, in some cases with the assistance of outside counsel, labor many hours on these cases. Major civil cases ongoing in 2003 included nationally watched litigation involving the application of the Political Reform Act's disclosure requirements to Indian tribes. (In a major legal victory for the agency, the 3rd District Court of Appeal in Sacramento in

(Continued on page 21)

The FPPC: Who we are

The Fair Political Practices Commission was created by the Political Reform Act of 1974, a ballot initiative passed by California voters as Proposition 9.

The Commission is a bipartisan, independent body of five members that administers and enforces the Political Reform Act's rules on conflicts of interest, campaign contributions and expenditures and lobbying disclosure.

The Commission educates the public and public officials on the requirements of the Act. It provides written and oral advice to public agencies and officials; conducts seminars and training sessions; develops forms, manuals, instructions and educational materials; and receives and files economic interests statements from many state and local officials.

The Commission investigates alleged violations of the Political Reform Act, imposes penalties when appropriate and assists state and local agencies in developing and enforcing conflict-of-interest codes.

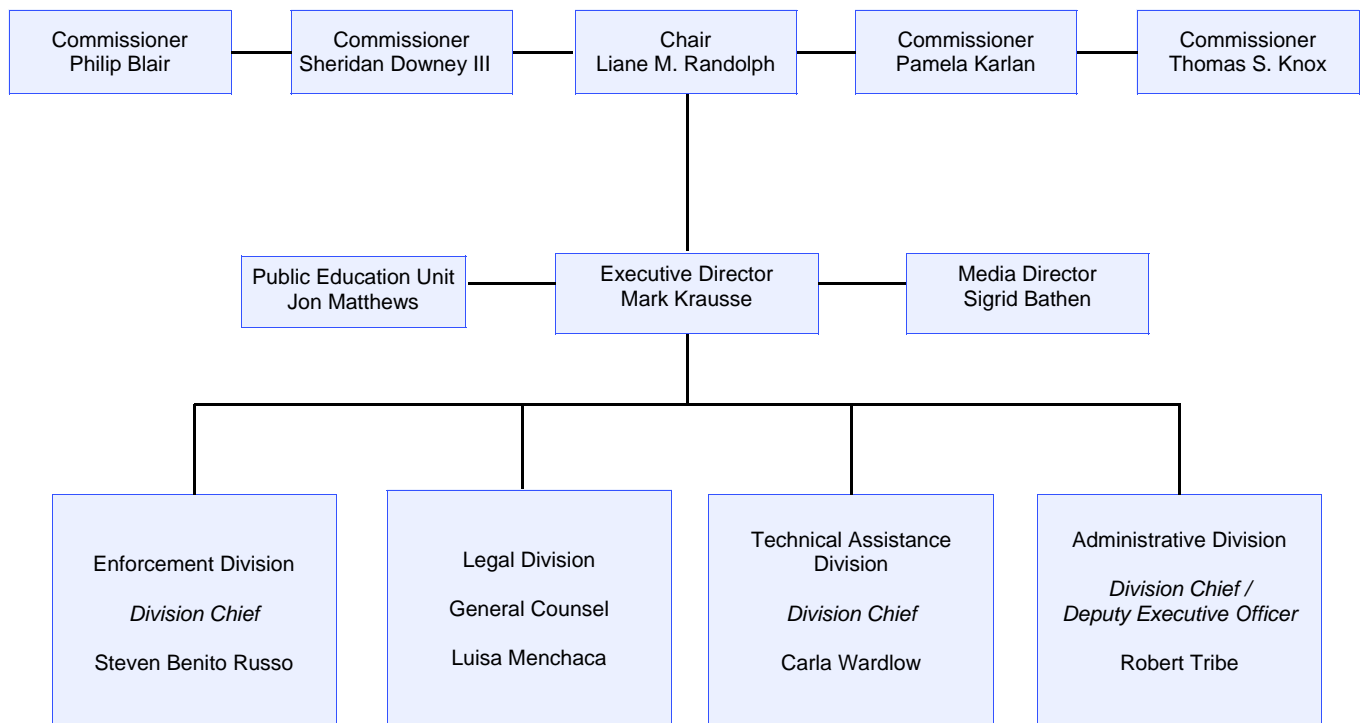
The Governor appoints two commissioners, including the chairman. The Secretary of State, the Attorney General and the State Controller each appoint one commissioner. Commissioners serve a single, four-year term, and no more than three members can be registered with the same political party. The chairman is salaried and serves full-time, and the other four members serve part-time.

The Commission generally meets once each month to hear public testimony, issue opinions, adopt regulations, order penalties for violations of the Act and take other action.

Supporting the Commission is a staff of 69 employees. The Commission has four main divisions — Enforcement, Technical Assistance, Legal and Administration, as well as a small executive staff and a Public Education Unit.

The Commission is headquartered at 428 J Street in downtown Sacramento. The public reception area is in Suite 620.

**Fair Political Practices Commission
Organization Chart
April 2004**



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March 2004 upheld the right of the FPPC to sue the Agua Caliente Band of Cahuilla Indians for failing to disclose the tribe's contributions to political campaigns and its lobbying activities. The case is continuing.)

Informing the public and regulated community

While the FPPC worked diligently to fairly enforce the Political Reform Act during 2003, Commissioners and staff members also strived to educate and inform the members of the regulated community about their legal obligations.

A major FPPC staff project completed in 2003 was the writing and production of two new campaign disclosure manuals for state and local candidates. The comprehensive publications, now available on the FPPC's web site, were given final approval by the Commission at its January 2004 meeting.

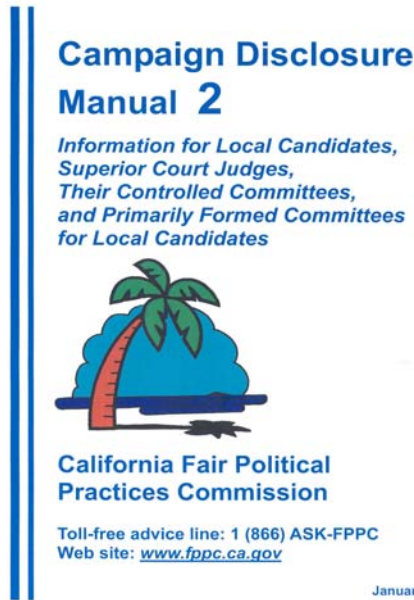
The new manuals include information on candidates' and committees' record keeping requirements, definitions important to campaigns, reporting obligations and restrictions and prohibitions.

Other new or revised publications included a fact sheet for candidates involved in the special 2003 statewide recall election, and a new edition of the pamphlet, "How Do I Get Advice from the FPPC?"

Members of the Commission, Legal Division staff and other employees also made a strong effort to encourage participation in the FPPC's Interested Persons Process. This included web-based and e-mail-based notices of opportunities for comment.

In other work, FPPC staff members answered thousands of calls for telephone advice from members of the regulated community. The FPPC saw its very popular toll-free advice line—1-866-ASK-FPPC—complete its third full year of operation. On all lines in 2003, our Technical Assistance Division staff members received 47,064 calls seeking advice, guidance and other assistance.

Callers asked a broad variety of questions, including how to comply with the Political Re-



The FPPC's new Campaign Disclosure Manual 2 for local candidates and committees was one of many new or revised publications produced by the agency in 2003.

form Act's rules governing campaign contributions and expenditures, how to avoid conflicts of interest, how to complete Statements of Economic Interests (Form 700s), or how to comply with lobbying disclosure requirements.

In 2003, the month of January was the busiest for our advice line staff, with 5,578 calls received. But at least 4,000 calls were received during each of seven months of the year.

On the more complicated advice issues, the FPPC wrote 304 letters of advice to those with obligations or duties under the Political Reform Act. The Legal Division and Technical Assistance Division conducted frequent joint internal advice meetings on the more complex issues pertaining to advice.

To the extent our budget resources permitted, FPPC staff also conducted many in-person seminars and outreach visits during 2003.

The FPPC's Technical Assistance Division offered 27 in-person seminars with a total of 1,033 attendees. These seminars, held at FPPC headquarters in Sacramento and in various cities

(Continued on page 22)

“Express advocacy” is a term crucial to government regulation of campaign advertising. Its central importance grew out of the Supreme Court’s initial review of the Federal Election Campaign Act, where the Court found that the First Amendment will sanction regulation of campaign speech only when that speech is “coordinated” with a candidate, or contains what has come to be called “express advocacy.” Thus in California any person spending more than a threshold amount on speech that includes “express advocacy” becomes a “committee” under the Act, subject to associated public filing and disclosure obligations, and contribution limits.

Because of its importance, the definition of “express advocacy” has had a long history, worked out in federal and state courts over the past 26 years. Two recent decisions by California appellate courts interpret the Act’s definition of “express advocacy,” a development suggesting to staff that the Commission may wish to review its current regulations on this point. After an overview of case law to supply necessary context, this memorandum explains how these recent decisions construe “express advocacy” under the Act, flags matters the Commission may wish to consider in coming months, and offers the public an opportunity to comment on the same topics.

— Excerpt from one of many 2003 Legal Division memoranda presented to the Commission

(Continued from page 21)

and agency offices, offer an informal overview of Political Reform Act obligations. The seminars feature colorful PowerPoint presentations, informal discussions, and lengthy opportunities for questions and answers.

The seminars included:

- Eight candidate/treasurer seminars held in the communities of Napa, Norwalk, Pasadena, Vallejo, Rancho Palos Verdes, Mountain View, Westlake Village and Modesto;
- Three conflict of interest code review seminars for state agencies, held at the Commission offices in Sacramento;
- Nine Statement of Economic Interests filing officer seminars, attended by 439 filing officers and officials.

Technical Assistance Division staff also participated in 46 campaign and Statement of Economic Interests outreach visits in 2003, providing highly tailored instruction to attendees.

Other Commission staff, including those from Executive, the Legal Division and the Enforcement Division, also participated in outreach activities. For example, our Enforcement Division staff attended a three-day meeting of the

California District Attorneys’ section on political corruption, while Legal Division staff provided a conflict of interest seminar at the San Diego Port Authority in February. The Legal Division also received positive evaluations for seminars offered for other state agencies on the subject of revolving door restrictions.

Commission staff assisted the Bipartisan California Commission on Internet Political Practices as it prepared to release its final report, and posted meeting agenda and other information from the Bipartisan Commission on our web site.

With the assistance of all divisions, the Public Education Unit coordinated the FPPC’s web site, published the FPPC Bulletin and other educational publications, provided a dial-in broadcast of Commission meetings, and offered other services.

On the national level, the Commission chair, the Public Education Unit and staff from the Enforcement Division actively participated in COGEL, the Council on Governmental Ethics Laws. COGEL membership includes ethics, elections and freedom of information agencies from across the U.S. and Canada.

The FPPC’s media director, assisted by the Executive Fellow, interns and other staff, responded to numerous inquiries from reporters and editors representing California and national

(Continued on page 23)

(Continued from page 22)

newspapers, radio and television broadcast networks and stations, magazines, web-based publications, newsletters and the foreign press. Assistance provided by the agency included copies of public records, in-depth interviews, telephone assistance, and publication of numerous press releases and press advisories.

The FPPC's media director, Sigrid Bathen, received the Lifetime Achievement Award from the State Information Officers Council (SIOC). The award honored Bathen's long and distinguished career in state government communications and public service.


Interpreting the law

The Commission, assisted by the Legal Division and other staff members, continued and expanded its core work of implementing the Political Reform Act. Efforts on these projects included the adoption, amendment or repeal of 37 regulations during 2003.

This included further implementation of the complex provisions of Proposition 34, the campaign reform initiative passed by voters in November of 2000.

In the years since Proposition 34 was enacted, the Commission has adopted or amended over 40 regulations and issued two

(Continued on page 24)



FAIR POLITICAL PRACTICES COMMISSION

SEARCH SITE MAP COMMISSION PRESS CENTER LIBRARY & PUBLICATIONS FEEDBACK FORMS

Welcome to the FPPC Web Site

The Mission of the FAIR POLITICAL PRACTICES COMMISSION is to promote the integrity of representative state and local government in California through fair, impartial interpretation and enforcement of political campaign, lobbying, and conflict of interest laws.

FPPC's Toll-Free Number:
1-866-ASK-FPPC
(1-866-275-3772)

428 J Street, Suite 620
Sacramento, CA 95814

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**THE BIPARTISAN CALIFORNIA COMMISSION
ON INTERNET POLITICAL PRACTICES**

FPPC Home Page

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What's New at FPPC?

Interested Persons Meeting on April 7, 2004
FPPC staff members will hold an interested persons meeting on April 7, 2004, for public input relating to the possible incorporation of Government Code section 1090 into the Political Reform Act. The Commission also invites written comments on this topic. Visit our [Interested Persons page](#) for more information.

Interested Persons Meeting on March 24, 2004
FPPC staff members will hold an interested persons meeting on March 24, 2004, to seek public comment on the issue of conflict of interest regulations: standards of care. Please visit our [Interested Persons page](#) for more information.

Major Court Decision
The 3rd District Court of Appeal has upheld the right of the FPPC to sue the Agua Caliente Band of Cahuilla Indians for failing to disclose the tribe's contributions to political campaigns and its lobbying activities. Here is the court decision and our news release.

2004 Version of the Political Reform Act
The 2004 version of the Political Reform Act of 1974 is now available. To view or download, visit our [Political Reform Act page](#).

Interested Persons Meeting on March 10, 2004
FPPC staff members held an interested persons meeting on March 10, 2004, for public comment on a proposal to extend the termination date of committees and allow committee reopening. Visit our [Interested Persons page](#) for more information.

New Campaign Disclosure Manuals
New FPPC campaign information manuals for state and local candidates are now available on our site. The 2004 Addendum to other FPPC campaign manuals is also available. Visit our [Forms and](#)

The FPPC's web site, www.fppc.ca.gov, provides informative and educational content for the public, including forms and publications, regulations, meeting agenda, press releases and the Political Reform Act.

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opinions relating to its provisions. In addition, the Commission made several major policy decisions, first pertaining to the campaign reporting requirements under the new law, then focusing on discrete areas such as outstanding net debt, transfers, carry-over, and expenditure limits.

Interested Persons meetings in 2003 invited public comment on a wide range of rulemaking subjects including reporting of incentive compensation, reporting by affiliated entities, defining express advocacy, conflicts of interests, statements of economic interests, and various draft publications.

To assist the public, regulated community and FPPC staff members, the FPPC published an annual revision of the Political Reform Act in 2003. This annual publication is required by statute.

Filing duties

In 2003, FPPC staff members received, logged, reviewed, and filed 21,718 Statements of Economic Interests and Statements of Economic Interests amendments from public officials across California. These statements are public records and copies are made available by the Commission to the public upon request at no charge or, in cases of quantity orders, for a nominal fee.

Employees and officeholders of virtually all state and local agencies, as well as candidates for public office, use the FPPC "Form 700" to file these personal financial statements. The FPPC reviewed and revised the Form 700 during 2003—an annual project.

Many Statements of Economic Interests are not filed directly with the FPPC, but instead go to local or state agency filing officers or other officials. The FPPC did extensive work in 2003 to help train Form 700 filing officers and filing officials at other agencies, and to assist other state and local government agencies in the adoption, review and update of their individual conflict of interest codes.

Web site development

As part of its continuing efforts to better serve the regulated community and public, and make the most efficient use of its resources, the FPPC continued to expand and improve its web site during 2003.

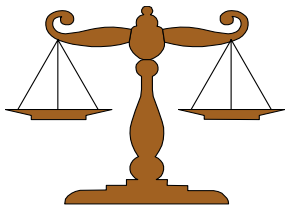
Major revisions included full implementation of a new, automated list-serve e-mail subscription system. Using the Mailing Lists page on our web site, anybody can sign up to automatically receive various FPPC publications, interested persons notices, monthly meeting agendas and other information.

The agency has converted many of its publications and notices to be primarily web-based and e-mail-based publications. This provides more timely information to the public and regulated community and conserves resources. However, a limited number of printed copies are made available for those without computer resources.

Other new web features in 2003 included a consolidated Interested Persons notice page and a page for the FPPC's ongoing study of proposals to merge Government Code section 1090 and other statutory and common law conflict of interest provisions into the Political Reform Act.

Administration

In 2003, the FPPC's small Administration Division provided computer and data processing support, budgeting, purchasing, printing, personnel services, public reception, mailing, document receiving and many other vital services. The division helped the agency reduce ongoing and one-time operations costs and function as efficiently as possible within its budget and personnel resources.



Litigation Report

Pending litigation report prepared for the Commission's April 8, 2004, meeting:

California ProLife Council, Inc. v. Karen Getman et al.

This action challenges the Act's reporting requirements for express ballot measure advocacy. In October 2000 the Federal District Court for the Eastern District of California dismissed certain counts for standing and/or failure to state a claim, and later granted the FPPC's motion for summary judgment, eliminating further counts in a judgment entered on January 22, 2002. Plaintiff appealed that judgment to the Ninth Circuit Court of Appeal. The Ninth Circuit rejected plaintiff's legal claims, affirming that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy upon demonstrating a sufficient state interest in so doing. The Ninth Circuit remanded the matter back to the district court to determine whether California can establish a state interest sufficient to support its committee disclosure rules, and whether the state's disclosure rules are properly tailored to that interest. To permit more time for discovery, the district court issued an amended Scheduling Order, providing that discovery will extend to May 17, 2004, with discovery relating to expert witnesses to conclude on August 20, 2004. Dispositive motions, if any, will be heard no later than October 29, 2004. Trial is now set for March 7, 2005.

FPPC v. Agua Caliente Band of Cahuilla Indians, et al.

The FPPC alleges in this action that the Agua Caliente Band of Cahuilla Indians contrib-

uted more than \$7.5 million to California candidates and ballot measure campaigns between January 1 and December 31, 1998, but did not timely file major donor reports disclosing those contributions, and likewise failed to disclose more than \$1 million in late contributions made between July 1, 1998 and June 30, 2002. The FPPC later amended the complaint to add a cause of action alleging that the tribe failed to disclose a \$125,000 contribution to the Proposition 51 campaign on the November 5, 2002 ballot. Defendants responded to the lawsuit by filing a motion to quash service, alleging that they are not required to comply with the Political Reform Act because of tribal sovereign immunity. On February 27, 2003 the Honorable Loren McMaster of the Sacramento County Superior Court ruled in the FPPC's favor. On April 7, defendants filed a petition for writ of mandate in the Third District of the Court of Appeal, challenging the decision of the trial court. The petition was summarily denied on April 24, 2003, whereupon defendants filed a petition for review in the California Supreme Court. On July 23, 2003 the Supreme Court granted review and transferred the case back to the Court of Appeal, where oral argument was heard before Justices Blease, Sims, and Davis. On March 3, 2004, the Court issued its opinion, affirming the Superior Court's decision after concluding that "the constitutional right of the State to preserve its republican form of government trumps the common law doctrine of tribal immunity." The Superior Court set a Case Management Conference for April 1, 2004.

FPPC v. Santa Rosa Indian Community of the Santa Rosa Rancheria

In this action the FPPC alleges that the Santa Rosa Indian Community of the Santa Rosa Rancheria failed to file major donor semi-annual campaign statements in the years 1998, 1999, and 2001, involving more than \$500,000 in political contributions to statewide candidates and propositions, and that defendants failed to disclose more than \$350,000 in late contributions made in October 1998. The complaint was originally filed on July 31, 2002, and was amended on October 7, 2002. On January 17, 2003, de-

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...Litigation Report

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defendants filed a motion to quash service, based on its claim of tribal sovereign immunity. On May 13, 2003 the Honorable Joe S. Gray of the Sacramento County Superior Court entered an order in favor of defendants. On July 14, 2003, the FPPC appealed this decision to the Third District Court of Appeal, where the matter is now pending. The Attorney General has filed an amicus brief in support of the FPPC's position.

FPPC v. American Civil Rights Coalition, et al.

In a lawsuit filed in the Sacramento County Superior Court on Sept. 3, 2003, the FPPC alleges that the American Civil Rights Coalition ("ACRC") and its CEO Ward Connerly failed to file campaign statements reporting the source of almost \$2 million contributed to promote the passage of Proposition 54 on the Oct. 7 ballot. An application for intervention in the lawsuit was filed on September 16 by a group known as the "DOE Class" of past and potential contributors to ACRC, seeking among other things to postpone a hearing on the FPPC's motion for preliminary injunction to an unspecified later date. The court went forward with the injunction hearing on September 19, 2004, denying the FPPC's motion on the ground that the factual record was not sufficiently developed to warrant a preemptive remedy. Defendants next brought a special motion to strike the complaint under Code of Civil Procedure § 425.16. On December 1, 2003, the Superior Court denied that motion. On December 3, defendants appealed to the Third District Court of Appeal, where briefing is now underway. On March 16, 2004, defendants/appellants filed their opening brief. A case management conference in the Superior Court has been continued to September 2, 2004.

FPPC v. Caroline Getty and Wild Rose, LLC

In this lawsuit filed in the Sacramento County Superior Court on October 16, 2003, the FPPC alleges that Caroline Getty and her wholly owned company Wild Rose, LLC made two \$500,000 contributions to the Nature Conservancy Action Fund of California in the name of Wild Rose, LLC, without disclosing that Ms. Getty was the true source of the contributions. The first contribution, in 2000, was made to support the Propositions 12 & 13 campaign. The second contribution, in 2002, was made in support of the Proposition 40 campaign. Defendants filed a demurrer to the complaint, as well as a special motion to strike under Code of Civil Procedure § 425.16. On January 16, 2004, the Superior Court overruled defendants' demurrer, and denied the motion to strike. Defendants thereupon timely answered the Complaint, and then agreed to pay a \$135,000 civil settlement. A stipulated judgment was filed with the court on March 23, 2004. A final judgment pursuant to stipulation was approved by the Superior Court on March 25, 2004.

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FPPC
Toll-free Advice Line:
1-866-ASK-FPPC
(1-866-275-3772)

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Evans v. FPPC, et al.; Walters v. FPPC, et al.

The plaintiffs in these cases are State Assembly candidates on the March primary ballot. They obtained writs from the Sacramento Superior Court in December, allowing each to amend his Candidate Statement of Intention to change the indicated intent to accept or reject voluntary expenditure limits. The Secretary of State and the FPPC opposed plaintiffs' writ petitions, and the FPPC immediately sought a writ of mandamus in the Third District Court of Appeal to over-turn the lower court's decisions. This petition was denied without comment, with one judge indicating he would grant the writ. The FPPC has filed a Notice of Appeal, to secure an appellate decision on the merits of the Superior Court's actions. The transcript has been prepared by the Superior Court and, once filed with the Court of Appeal, will commence the 30-day period in which to file the FPPC's opening brief.

FPPC v. Cruz Bustamante, et al.

In a lawsuit filed in the Sacramento County Superior Court on January 7, 2004, the FPPC alleges that Lieutenant Governor Cruz Bustamante and two of his controlled committees violated state campaign contribution limits and campaign disclosure laws in connection with the 2003 gubernatorial campaign, by receiving contributions in excess of the limits for contributions to the gubernatorial campaign, passing the contributions through the bank account of the 2002 Lieutenant Governor re-election committee, and reporting those funds as contributions to and expenditures by the Lieutenant Governor committee. Defendants were required by the court to file a response to the complaint by February 11, 2004, but were granted an extension of time. The due date is now March 29, 2004.

FPPC v. Californians Against Corruption et al

The case stems from a 1995 administrative prosecution of a recall committee that failed to properly itemize its contributors, in violation of § 84211. In November 1995, the FPPC issued a default decision and order against defendants, imposing an administrative penalty of \$808,000. The FPPC then moved in Sacramento Superior Court to convert the penalty to a civil judgment. Defendants filed a cross-complaint/petition for writ of mandate in the Superior Court, contesting the default decision. In July 2000, the Superior Court dismissed defendants' pleadings for failure to prosecute. In March 2001, the Superior Court granted the FPPC's motion for summary judgment in the collection action, and entered judgment for \$808,000 plus interest. Defendants failed to gain relief from the Third District Court of Appeal or the California Supreme Court, and then turned to the United States Supreme Court with a petition for writ of certiorari. The FPPC timely filed its opposition, and the Supreme Court has now denied the petition.

Larry R. Danielson v. FPPC

On March 13, 2004 Danielson filed a Notice of Appeal from a money judgment entered against him by the Sacramento County Superior Court. Danielson had previously sought a Writ of Mandate in that court, challenging a proposed decision by an Administrative Law Judge which the Commission adopted at its December 2002 meeting. On November 7, 2003, the Superior Court denied the appellant's petition. The FPPC then filed its complaint for a money judgment, and prevailed on an uncontested motion for summary judgment, which is the subject of the present appeal. No hearing date has yet been scheduled by the Court of Appeal.

Legislative Update



The following is condensed from the Legislative Report prepared for the April 8, 2004, meeting of the Commission. For the complete report, please see the meeting agenda on our web site at:

<http://www.fppc.ca.gov/index.html?id=329>

Bills proposing to amend the Political Reform Act and/or Elections Code:

AB 1980 (Wolk) would limit contributions to a ballot measure committee controlled by a state candidate to \$21,200. The bill would require that expenditures by a candidate-controlled ballot measure committee for communications clearly identifying the controlling candidate be made from the portion of a contribution that does not exceed the limit applicable to the controlling candidate. Elections Code amendment would provide that expenditures by a candidate-controlled ballot measure committee in support of the candidate controlling that committee, or in opposition to that candidate's opponent, are not within the lawful purposes of the trust.

AB 2842 (Leno) would provide that bank loans are not exempt from the \$100,000 personal loan limit imposed on elective state office candidates by Proposition 34. The bill would double, triple, or lift a legislative candidate's contribution limits based on the amount by which personal funds contributed by an opposing candidate to his or her own campaign exceed the total amount of campaign contributions raised by the candidate.

SB 1712 (Alpert) would require the Secretary of State's office to review current filing and disclosure requirements of the Online Disclosure Act of 1997 and report to the Legislature, no later than June 1, 2005, its recommendations on revising requirements so as to promote greater reliance on electronic and online submissions.

SB 1849 (Karnette) would change the definition of "election cycle" for the purposes of online disclosure from the period of time commencing 90 days prior to an election and ending on the date of the election, to the time commencing with the filing of a committee's statement of organization. Would also require lobbying firm and lobbyist employer reports that are currently filed quarterly to be filed monthly.

AB 3101 (ER&CA) would provide that a candidate may not change his or her acceptance or rejection of voluntary expenditure limits more than twice after the candidate's initial filing of a statement of intention to be a candidate.

AB 1784 (Wolk) would prohibit a lobbyist from contacting an elected state officer, other than a legislator, with whom the lobbyist has or had a contractual or business relationship, for the purpose of influencing legislative or administrative action. The bill would define contractual and business relationships and require lobbyists to notify the Secretary of State within 14 days of a contractual or business relationship with an elected state officer. AB 1784 would also require that candidates report a contract or agreement that includes a payment contingent upon the candidate's election to office.

AB 1785 (Frommer) would prohibit a lobbyist from contacting a legislator with whom the lobbyist has or had a contractual or business relationship, for the purpose of influencing legislative or administrative action. The bill would require lobbyists to notify the Secretary of State within 14 days of a contractual or business relationship with an elected state officer.

AB 2818 (Pacheco) would provide that individuals who are members of agencies exempt from

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...Legislative Update

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disclosure and disqualification related to the receipt of campaign contributions under section 84308 are themselves exempt from that section. Under existing law, these individuals are not exempt if they are acting as voting members of another agency.

AB 2949 (Hancock) would repeal a provision prohibiting public officers from expending or accepting public funds for purposes of seeking elective office, and enact the California Clean Money and Clean Elections Act of 2004, which would authorize eligible candidates, as defined, to obtain public funds according to specified procedures and requirements, provided that certain thresholds are attained.

AB 3006 (Haynes) would prohibit legislators and constitutional officers from accepting contributions during the period between the annual submission of the Governor's Budget and the enactment of the state budget.

SB 1340 (Perata) This bill is a Commission-sponsored measure that would, in addition to other changes, require filing officers for independent expenditure committees to maintain paper independent expenditure reports under the name of the candidate or measure supported or opposed by the independent expenditure. The bill would require retention of campaign records for 5 years, require audits of electronic reports and statements, and create a 4-year statute of limitations for collection of fines.

SB 1351 (Soto) would prohibit former elected or appointed city and county officials who held a position with a local government agency from appearing before or communicating with that agency if the appearance or communication is made for the purpose of influencing regulatory action.

SB 1353 (Perata) This is a Commission-sponsored measure that would, in addition to other changes, revise the definition of state general purpose committees to include a political party committee.

SB 1449 (Johnson) would prohibit a candidate from loaning more than \$100,000 to his or her elective state office campaign.

SB 1730 (Johnson) would change the statewide direct primary election from being held on the first Tuesday in March in each even-numbered year, to being held on the last Tuesday in June of each year.

AB 890 (Wesson) would allow an elected state officer serving his or her last permitted term of office to accept contributions after the date of the election. See also SB 467 (Johnson) on this subject.

AB 1197 (Wiggins) would include in the definition of "designated employee" any board member, chief business officer, superintendent, assistant superintendent, deputy superintendent, associate superintendent, chief personnel officer, and general counsel of a public school district or county office of education, and equivalent positions, and any individual having governance or management responsibility in a charter school. The bill would designate the county board of education as the code reviewing body for charter schools.

SB 604 (Perata) would define "cumulative contributions" to be those contributions received beginning 12 months prior to the date the commit-

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...Legislative Update

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tee made its first expenditure to qualify, support, or oppose the measure and ending within seven days of the time the advertisement is sent to the printer or broadcast station. The bill would delete references to telegrams and adds methods for filing, including facsimile transmission and guaranteed overnight delivery. Amended by the author at the request of plaintiffs in *Levine v. FPPC* to reform the slate mail disclosure statutes at issue in that case.

SB 641 (Brulte) would change the definition of "mass mailing" found in the Act from "mail" to a specific definition of what items delivered to a person constitute a mass mailing. It also would add language to the act prohibiting the expenditure by a candidate, committee or slate mail organization for anonymous telephone advocacy for a candidate, ballot measure, or referendum. The author accepted an amendment requested by the Commission to maintain a record of the call's script or in the case of a prerecorded message, a taped copy. This would not apply to telephone calls made by the candidate, campaign manager, or volunteers. The author rejected a Commission sponsored amendment requiring disclosure at the beginning of the call, but took Commission language regarding retention of text or recording of content of message.

SB 1072 (Burton) would add contributions made to or received by a political party committee after the closing date of the last campaign statement required to be filed before an election to the definition of late contribution.

SCA 14 (Vasconcellos) would establish the Fair Political Practices Commission, the California Economic Strategy Panel (CESP) and the California Redistricting Commission by constitutional provision. It would establish the Clean Campaign Fund, administered by the FPPC and providing public funds to candidates under certain conditions. It would require the FPPC to license and monitor campaign consultants. It would change voting options and primary election dates. It would increase the number of Senators and Assembly members and their terms of office. It would change the voting requirement for General Fund appropriations from a two-thirds vote to a majority vote. It would place additional responsibilities on the CESP. It would make the Legislative Counsel responsible for redistricting, revise redistricting standards and create the CRC for the purpose of advising the Legislative Counsel.



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1-866-ASK-FPPC

FPPC Advice Summaries

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance may be provided to persons whose duties under the act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an "A," while informal assistance is identified by the letter "I."

Campaign

Steve Fechner
City of Torrance
Dated: December 2, 2003
File Number I-03-263

A general discussion of Commission rules for aggregating contributions among a business entity, the joint owners of the business entity, and among their spouses.

David R. Zamora
San Bernardino County Board of Supervisors
Dated: December 5, 2003
File Number A-03-267

This candidate for the board of supervisors was advised that office space donated for campaign use would be reported as a non-monetary contri-

bution and valued at the current market rate for similar commercial office space.

Ann D'Amato
Los Angeles Office of the City Attorney
Dated: December 8, 2003
File Number A-03-268

The Los Angeles Office of the City Attorney has been approached by an independent production company to cooperate in a television program which would follow participants in the city's informal, non-judicial criminal hearings program. The producers will compensate the city for all costs associated with the production and will also pay actual production costs, including renting facilities, hiring personnel and producing finished episodes. As part of each episode, the city attorney would also have a segment to discuss cases and give crime prevention tips. So long as the television program does not urge viewers to vote for the city attorney, does not refer to his or her election campaign, and does not solicit contributions, the payments for the program (and the appearance by the city attorney) will not be considered a contribution to the city attorney.

Joanie Weiser
Friends of Paul Gallegos
Dated: December 17, 2003
File Number I-03-279

Advice on the campaign reporting and record-keeping requirements for the proceeds of a concert fundraiser and discussion of requirements as they pertain to "pass the hat" type of fundraisers is provided.

Casey Gwinn
City of San Diego
Dated: November 17, 2003
File Number I-03-217

An informal advice letter speaks to the general conflict-of-interest rules that apply to members of a city council when they consider amendments to the city's ethics rules governing campaign contributions.

Betty Presley
Mimi Walters for State Assembly
Dated: November 24, 2003
File Number A-03-226

A candidate for the state Assembly is advised

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that she may not amend her Form 501 to change her designation regarding her initial indication that she agreed to abide by voluntary expenditure limits. The letter also advises that a candidate may not amend his or her form to change the designation merely because the candidate asserts the form was filled out in error. (The candidate obtained a writ from the Superior Court permitting the candidate to file the amendment she sought. The matter is now on appeal before the Third District Court of Appeal. A decision is not expected before the General Election.)

Trent J. Benedetti

Sam Blakeslee for Assembly Exploratory Committee

Dated: November 19, 2003

File Number I-03-238

A committee established to support a candidate for state elective office must terminate within 24 months from the date of the election for which the committee was formed, assuming the committee has net debt outstanding. In addition, this letter concludes that the candidate may loan up to \$100,000 to each of his two campaign committees for state elective office.

Jeanne-Marie Rosenmeier

Peter Camejo for Governor

Dated: November 21, 2003

File Number A-03-239

A campaign treasurer of a terminated committee is advised that, limited to the specific facts of her request for advice, either she, as treasurer, a third party, or the defeated candidate could make an in-kind contribution by paying the bank directly the \$15.75 required to obtain copies of checks requested by the Franchise Tax Board's auditor. Because it is an in-kind contribution, it is not necessary to open a campaign bank account or to reopen the committee. The in-kind contribution must be reported on Schedule C of Form 460.

Barbara Aguirre

Chris Mathys, Republican for State Assembly

Dated: November 14, 2003

File Number A-03-243

The proceeds of a loan made to a state candidate by a commercial lending institution for

which the candidate is personally liable, made in the lender's regular course of business on terms available to members of the general public, which the candidate then lends to his or her campaign, do not count toward the \$100,000 loan limit of Government Code § 85307(b).

Mark Wyland

California Assembly

Dated: November 21, 2003

File Number I-03-248

If elected to a third term, section 85316 prohibits a member of the Assembly from raising funds after the election for purposes other than paying net debt. The Act does not provide any specific method for officeholders to raise funds for officeholder expenses. However, officeholder expenses may be paid from any of the Assembly member's committees for Assembly.

James R. Sutton

State Assembly

Dated: November 20, 2003

File Number A-03-253

A candidate for the state Assembly is advised that she may not amend her Form 501, Candidate Statement of Intention, to alter her designation with regard to voluntary expenditure limits. The letter provides an in-depth analysis of the policies underlying the voluntary expenditure limit scheme and the reasons the scheme permits a candidate to change his or her designation in only rare circumstances. (The candidate obtained a writ from the Superior Court permitting the candidate to file the amendment she sought. The matter is now on appeal before the Third District Court of Appeal. A decision is not expected before the General Election.)

Sherry Morton

City of Riverside

Dated: November 21, 2003

File Number I-03-270

A committee controlled by or primarily formed to support or oppose a candidate involved in the January 13, 2004, run-off election in the City of Riverside, may combine the semi-annual statement for the second half of 2003 with the semi-annual statement for the first half of 2004. A filing schedule for this election is also included.

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Douglas P. Haubert**City of Carson****Dated: October 15, 2003****File Number I-03-212**

Payments made by a defeated candidate, to prosecute an election contest, are reportable campaign expenditures under the Act.

Stephen J. Kaufman**State Treasurer****Dated: October 1, 2003****File Number A-03-220**

The state treasurer is advised that he may make independent expenditures from his 2006 reelection committee to pay for advertisements opposing the recall election and appear in those advertisements.

Julie Ruiz Raber**Carson City Council****Dated: October 16, 2003****File Number I-03-222**

Volunteer personal services provided to a committee by an attorney are not contributions. Therefore, the committee is not required to report them.

Kimberly Smith**City of Cupertino****Dated: September 16, 2003****File Number A-03-177**

Advice to a city that under the Act, the City of Cupertino may display photographs and biographies of candidates for city council on the city web site, even though not all candidates provide photographs or biographies. The letter concludes that all candidates must have the opportunity to participate, but it is not necessary that all candidates take advantage of the opportunity. Other laws outside the Act may apply.

Colleen C. McAndrews**Californians for Schwarzenegger****Dated: September 10, 2003****File Number A-03-197**

Electronic contributor records and other electronic information provided to a campaign committee by Calnet Business Bank meet the recordkeeping requirements of the Act. The bank receives contri-

butions for the committee by credit card and electronic check via the Internet, by credit card via fax, and by mail. Contributions that do not include all of the required contributor information, or that exceed the contributions limits, are not accepted. Contributor information, including images of contribution checks, is provided to the committee on a CD-ROM.

James C. Harrison**Democratic Governors' Association****Dated: September 2, 2003****File Number A-03-201**

The Democratic Governors' Association may make a contribution from its state general purpose committee to Californians Against the Costly Recall of the Governor because the latter is a ballot measure committee. As such, contributions to the ballot measure committee are contributions used for purposes other than making contributions to candidates for elective state office and thus not subject to limitation under section 85303.

Ken West**Lynwood Recall Election****Dated: September 15, 2003****File Number A-03-203**

Funds raised by individuals to pay for signage that informs voters of the date of a local election without mentioning a candidate or ballot measure are not payments for political purposes that would incur reporting obligations.

Lori Jacobs**San Diego Board of Realtors****Dated: September 23, 2003****File Number A-03-208**

A sponsor of a recipient committee may pay expenses for a fundraiser to support the committee without the sponsor qualifying as another recipient committee if the expenses are reported by the committee as nonmonetary contributions, and a responsible officer of the sponsoring organization, in addition to the treasurer of the committee, signs the committee campaign statement. In addition, this letter states that receipts of under \$25 from a single source are noted in the committee's records as a lump sum amount; no additional information on the source of the receipts is required.

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Conflict of Interest

Chad A. Jacobs
City & County of SF
Dated: December 1, 2003
File Number A-03-126

A supervisor is presumed to have a conflict of interest in a decision that would add his property to the list of properties eligible to participate in the city's Mills Act program. Specifically, exempting the supervisor's property does not change the conclusion.

Damien B. Brower
City of Redwood City
Dated: December 23, 2003
File Number A-03-205

An official may participate in implementation decisions if no material financial effect will result.

Thomas F. Nixon
City of Placentia
Dated: December 18, 2003
File Number A-03-207

A public official sought advice as to whether he is disqualified from participating in city council and redevelopment agency decisions concerning the preparation and approval of a memorandum of understanding between the city and a developer of a proposed transit-oriented development project. The official also sought advice as to whether he is disqualified from participating in decisions concerning the project generally, if he, in his private capacity as a real estate broker/agent, became involved in real estate sales involving property located within 500 feet of the project's boundaries.

The official was advised that it was not reasonably foreseeable that the memorandum of understanding, which covers only the developer's voluntary reimbursement to the city of its cost of processing various licenses and permits, would by itself have a financial effect upon any of the official's economic interests. The official was further advised that since brokers or agents acting in a representative capacity do not have an interest in the real property which is the subject of the real estate transaction in which they are

participating, the distance between the real property and the project's boundaries is immaterial when determining whether a conflict of interest exists. Thus the official does not have a conflict of interest disqualifying him from participating in these decisions.

Richard Stadtherr, Mayor
City of Porterville
Dated: December 23, 2003
File Number A-03-210

A mayor may participate in a decision if the decision will not result in any financial effect on the mayor's employer due to an existing exemption.

Daniel J. McHugh
City of Redlands
Dated: December 5, 2003
File Number I-03-228

A city council member sought advice as to whether he had a conflict of interest disqualifying him from participating in decisions regarding a developer's proposed real estate development when the council member had an outstanding offer to the developer to purchase a parcel of real property located in another area. The council member was advised that since an offer alone did not result in a legally enforceable obligation on the part of the developer to sell, or the council member to purchase, real property, it was not an interest in real property. The three types of interest in real property – option, beneficial interest, ownership interest – were discussed and defined, with examples. Potential conflicts based on personal financial effects and the developer as a source of income or gifts, should the council member acquire a legally enforceable right to acquire the real estate parcel, were also discussed.

Elizabeth Wagner Hull
City of Chula Vista
Dated: December 12, 2003
File Number A-03-232

Three council members own residences and other property in an urban core special plan area. While these properties create a conflict of interest with respect to specific plan decisions, it appears that the "public generally" exception will permit two of the council members to participate in the decision.

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Rob Phipps
Ceres City Council
Dated: December 9, 2003
File Number A-03-265

The council member was advised that his source of income, a golf course, is directly involved in decisions regarding a fence that may be positioned on the course and for which the golf course may be asked to pay. When a source of income is directly involved in a governmental decision, any financial effect is considered "material." The council member was advised to recuse himself from decisions regarding the fence.

Jonady Hom Sun
CA Public Utilities Commission
Dated: December 19, 2003
File Number I-03-281

A public official sought advice as to whether it is necessary to look beyond a 12-month period in order to conclude whether a particular governmental decision will have a reasonably foreseeable material financial effect. The official was advised that the Commission regulations do not have a "bright line" test which would establish a time beyond which a material financial effect on a source of income would not be reasonably foreseeable. Instead, the determination of what is reasonably foreseeable depends upon the nature of the decision and the totality of the surrounding circumstances.

Jonna A. Ward
CA State Department
December 23, 2003
File Number A-03-282

The Act regulates the conduct of public officials and former public officials. It does not impact a business's ability to bid on a specific contract, nor does it limit participation by employees of the business who are not public employees.

Ronald R. Ball
City of Carlsbad
Dated: December 30, 2003
File Number I-03-286

General guidance on the application of the Act's conflict-of-interest provisions to a city's planning

director whose spouse is employed by a private planning consultancy which represents developers, and appears on their behalf, in connection with their applications before the planning commission and city council.

Peter M. Thorson
City of Mission Viejo
Dated: December 31, 2003
File Number I-03-287

The city council was advised that when it makes an appointment to a joint powers agency from within its own members, that council member who is being considered for the appointment may not participate in the decision. This decision would affect that council member's salary and per diem differently than it would affect the remainder of the council.

Robert B. Ewing
Town of Danville
Dated: December 11, 2003
File Number I-03-291

An official knows that he or she has a financial interest in a decision if the official knows that it is reasonably foreseeable that a decision will materially affect a source of income. As a general rule, an official "has reason to know" that a decision will affect a source of income whenever a reasonable person, under the same circumstances, would be likely to know the identity of the source of income and would be aware of the decision's probable impact on the source. (*Price Advice Letter*, No. A-85-165.) Generally, officials are presumed to know which persons have been sources of income to them.

Kathryn Lyddan
Brentwood Agricultural Land Trust
Dated: November 7, 2003
File Number A-03-182

An agricultural land trust, which encompasses the land in an entire city and a portion of the county, was advised that, because it was formed pursuant to a specific city ordinance to implement the mission of that ordinance, was funded primarily or substantially through governmental funds, performs a function which governmental entities are also authorized and do fulfill, and is treated as a public entity by other statutory provi-

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sions, the four *Siegel* criteria are fulfilled, and the land trust's board of directors and its executive director are subject to the requirements of the Political Reform Act. The trust was further advised that, because it covers more than one jurisdiction, the county board of supervisors is its code reviewing body, which will determine whether the trust should adopt its own conflict of interest code or be covered by the code of another agency, and whether the executive director and board of directors should file with the agency or the code reviewing body. In addition, a farmer with whom the trust is currently negotiating for a conservation easement, who has paid a member of the board of directors more than \$500 within the last 12 months for consulting and farm work, is a source of income to the board member, and the board member has a conflict of interest and may not participate in any decision regarding the conservation easement.

Mark W. Steres

City of Monterey Park

Dated: November 19, 2003

File Number A-03-221

This reconsideration of the advice provided in the *Steres* Advice Letter No. A-03-155, reaffirms the finding that a council member must disqualify from decisions regarding improvements and modifications of an easement. The council member's source of income retains a property interest in the easement and is therefore, directly involved in the decision.

William H. Wainwright

City of Martinez

Dated: November 4, 2003

File Number A-03-235

When a public official owns a property within 500 feet of the boundaries of property which is the subject of a governmental decision, it is presumed that the decision will have a material financial effect on the official's property. However, this presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the official's property.

Wendy R. Scalise

City of Atascadero

Dated: November 25, 2003

File Number A-03-246

A city council member would have a conflict of interest in decisions by the city council to purchase/guarantee a bond permitting groups of property owners to form assessment districts, which would result in a surcharge on the council member's property tax.

Don Temple

Long Beach Airport Advisory Commission

Dated: November 19, 2003

File Number A-03-262

A public official is a member of the Long Beach Airport Advisory Commission and is disqualified from voting on a recommendation on the environmental impact report because of a foreseeable material financial effect on nearby real property interests.

Bryn C. McLaughlin

Imperial County Local Agency Formation Commission

Dated: October 2, 2003

File Number A-03-086

A member of LAFCO may participate in discussions concerning the reorganization of a water district even though the member has a tenant farmer who may be impacted by the decision.

Charles J. Wright

Alta California Regional Center

Dated: October 14, 2003

File Number I-03-123

A general discussion of the gift and other provisions of the Act with respect to the participation of a legislative staff member on the board of an Alta Regional care center, where the public official's daughter receives services from Alta Regional.

Julie Hayward Biggs

City of Goleta

Dated: October 3, 2003

File Number A-03-166

A council member, elected at-large, who also serves as a member of the redevelopment agency is presumed to have a conflict of interest

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when her property is located within 500 feet of property which is the subject of a redevelopment decision.

Karl H. Berger
City of Santa Paula
Dated: October 31, 2003
File Number A-03-191

Numerous public officials jointly sought advice as to whether they have conflicts of interest regarding a decision to annex property to their city and if so, whether the "public generally" exception applied. The advice identified the property which is the subject of the decision as the property to be annexed and not existing city property which will be affected by the additional traffic generated by the annexation. The officials were also advised that the "significant segment" prong of the "public generally" exception was satisfied, in light of the number of residential properties affected by the additional traffic, but in the absence of facts describing how the additional traffic will financially affect property values within the significant segment, the second prong of the exception could not be applied.

Heather C. McLaughlin
City of Benicia
Dated: October 1, 2003
File Number A-03-194

It is presumed that the mayor's economic interest will not experience a material financial effect if the mayor's long-term lease is limited to property beyond 500 feet of land which is the subject of the decision. The lease previously included rights to property within 500 feet of the site, but the lease was amended to eliminate this interest.

Arnold M. Alvarez-Glasman
City of Montebello
Dated: October 28, 2003
File Number I-03-214

A mayor had a long-standing friendship with a police officer who filed a discrimination lawsuit against the city. The mayor was advised that friendships do not constitute economic interests. Therefore, absent some other economic interest, no conflict of interest would arise under the Act.

Roger Cochran
Dept. of Pesticide Regulation
Dated: October 21, 2003
File Number A-03-219

The Act's conflict-of-interest rules do not prevent a staff toxicologist from accepting part-time employment by a private sector business entity.

Marguerite P. Battersby
Mission Springs Water Dist.
Dated: October 23, 2003
File Number I-03-227

General guidance on potential conflict of interests that might arise when board members participate in decisions regarding litigation that involves a homeowner's association to which two board members belong.

Yolanda M. Summerhill
City of Whittier
Dated: October 15, 2003
File Number A-03-234

A public official will not have an economic interest in his adult son, merely based on the familial relationship. However, if the adult son is a source of income, then the conflict-of-interest rules could apply. In addition, if the decision affects the official's personal finances by \$250 or more in a 12-month period, he will have a conflict of interest in that decision.

Roy Rodriguez
City of Glendora
Dated: October 31, 2003
File Number I-03-237

The Act does not prohibit an individual from serving on a city water commission. However, that member may have conflicts of interest in decisions that will financially affect his business, which contracts with the city. If he has a conflict of interest in a given decision, he may not make, participate, or influence that decision.

Nancy Kierstyn Schreiner
City of Thousand Oaks
Dated: October 31, 2003
File Number A-03-242

A planning commissioner does not have a conflict of interest with respect to decisions regarding a private school's land use entitlement appli-

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cation, even if her child is a student at the school. However, if the decision were to affect the commissioner's personal finances (such as tuition or fees she must pay) by \$250 or more in a 12-month period, she will have a conflict of interest in that decision.

Jennifer McGrath
City of Huntington Beach
Dated: September 26, 2003
File Number I-03-042

A public official's volunteer activity did not create an economic interest in the organizations for which he volunteered. Reimbursement of travel expenses by his former union made the union a source of income to the official, but since the income was received more than 12 months ago, it was not an economic interest under the Act. Certain categories of income did not qualify as "sources of income" under the Act, as they fell within the pension and governmental salary exceptions. The official had other economic interests. However, as no pending governmental decisions were identified, no conflict of interest determinations could be made.

Robert B. Ewing
City of Danville
Dated: September 24, 2003
File Number A-03-116

Examination of whether a public official has an economic interest due to a client's interest in a partnership that is a source of income to the public official. A factual analysis was provided under *In re Nord* (1983) 8 FPPC Ops. 6 and regulation 18703.2(d)(1) and (2).

James Benjamin
Half Moon Bay Planning Commission
Dated: September 2, 2003
File Number I-03-122

A general discussion of possible conflicts of interest arising out of various economic interests held by six planning commissioners about to undertake a comprehensive review and update of a city's general plan and related planning guidelines.

Janet C. Crocker
Newark Unified School District
Dated: September 23, 2003
File Number I-03-137

This is a general discussion of conflict-of-interest rules as they pertain to a candidate for a school board district whose husband works for a school in the district. The Act does not prohibit the official from holding office under such circumstances. However, under certain circumstances that official may be required to abstain from decisions that materially affect her spouse.

Dean Derleth
City of Colton
Dated: September 16, 2003
File Number A-03-148

Advice was sought on behalf of nine public officials as to whether they may participate in decisions concerning adoption or amendment of a proposed redevelopment plan, when the officials owned real property or had business interests located within the redevelopment area. The advice concluded that seven of the officials have a disqualifying conflict of interest based on their economic interest in their principal residence. Although the "significant segment" prong of the "public generally" exception was met with respect to these officials' principal residences, there were no facts showing that they will be affected in substantially the same manner as the significant segment. Thus, the "public generally" exception could not be applied. However, the special form of the "public generally" exception, regulation 18707.9, applied to several of these officials. The advice concluded with a brief discussion of segmentation and referenced the newly adopted regulation 18709.

Victor Prussack
Nevada City
Dated: September 15, 2003
File Number A-03-169

A planning commissioner is instructed on when he can rely on an appraisal of the financial effect on his real property to rebut the presumption that any financial effect is material. The appraisal must be done by a disinterested and otherwise qualified real estate professional, based on an accurate understanding of all pertinent facts and cir-

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cumstances, including those listed as factors in regulation 18705.2(b)(1)(A)-(C), to be considered a good faith effort by the public official to assess the financial effect of a decision on his real property. All of these factors must be met to rebut the presumption of a material financial effect.

James P. Mayer
Little Hoover Commission
Dated: September 12, 2003
File Number I-03-171

General advice on the application of the conflict-of-interest laws to consultants for the Little Hoover Commission.

James C. Sanchez
City of Fresno
Dated: September 17, 2003
File Number I-03-173

The owner/proprietor of a private planning/development consulting business would be a "consultant" within the mean of the Act (and therefore, a public official) if retained to draft a specific plan and shepherd it through the approval process.

Sharon D. Stuart
City of Lompoc
Dated: September 16, 2003
File Number A-03-176

A general application of the 500-foot rule applicable to a public official's interest in real property. One official owns property within 500 feet of the subject property, and the remaining officials own property beyond 500 feet. An official who owns property exactly 500 feet from a subject property is "within 500 feet" as contemplated by the Act.

Kevin G. Ennis
LA Care Health Plan
Dated: September 15, 2003
File Number A-03-180

A public official appointed to a county public health agency, who is also the chief executive officer of a trade association of county health clinics, sought advice on participating in various agency decisions concerning free and community clinics located within the county. Free and community clinics that are members of the trade asso-

ciation pay dues fixed according to the clinic's operating expenses. The official was advised that she will not have a conflict of interest prohibiting her involvement in an agency decision that will not affect the operating expenses of the county's free and community clinics. For purposes of applying the "public generally" exception, the relevant significant segment of the "public generally" exception includes all free and community clinics located within the county, not just those clinics that are members of the county trade association for which the official is an officer. The advice includes a discussion of the "nexus test" and what financial impacts may be considered reasonably foreseeable under the standards articulated in *In re Thorner* (1975) 1 FPPC Ops. 198.

Ray A. Hanley
City of Atascadero
Dated: September 22, 2003
File Number A-03-196

A city council member is advised that he will not have a conflict of interest when making or participating in decisions regarding the location of the city's homeless shelter. Because the city council member's real property interest is located further than 500 feet from any proposed location for the shelter, there appears to be no reasonably foreseeable financial effect on the property.

Tony Roberts
County of Yuba
Dated: September 23, 2003
File Number I-03-199

A general discussion of the conflict-of-interest rules of the Act as they apply to a county employee who is seeking a seat on the county board of supervisors. The Act does not prohibit an official from holding multiple public positions.

Conflict of Interest Code

Teresa Vig Rein
Stanislaus Economic Development Workforce Alliance
Dated: December 12, 2003
File Number I-03-266

General advice regarding an agency's newly drafted conflict of interest code, specifically insert-

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ing language regarding the filing of “consultants,” as defined under the Act.

Lisa Kranitz
The Center for Water Education
Dated: November 6, 2003
File Number A-03-204

A nonprofit is determined to be a “local government agency.” This conclusion was formed through the application of the factors found in the Commission opinion, *In re Siegel* (1977) 3 FPPC Ops. 62. These factors include determining the impetus for formation, from where the funding derives, if the nonprofit performed a service traditionally performed by a public agency, and how the nonprofit is treated by other statutory provisions.

Alix A. Rosenthal
Dougherty Regional Fire Authority
Dated: November 26, 2003
File Number A-03-257

The requestor sought advice regarding the steps that should be taken to cancel her agency’s conflict of interest code once the agency ceases existence. In addition, an exemption was sought under regulation 18751 to permit the agency to suspend or terminate its existing conflict of interest code. The requestor was advised that once the agency ceases to exist, it may cancel its conflict of interest code effective as of the date of dissolution with no prior approval of the Commission, as its code reviewing body, required. A letter indicating the dissolution of the agency and the date of cancellation of its code is to be sent to the Commission, as its code reviewing body. No advice was given with respect to the exemption request since the Commission’s Executive Director, in a concurrent letter, denied the exemption request, noting that regulation 18751 is applicable only to agencies that have not yet placed a conflict of interest code into effect.

Alan R. Watts
Power Agency of CA
Dated: November 26, 2003
File Number A-03-258

An agency claimed that it had become inoperable and nonfunctioning and requested whether it may suspend its filing of biennial reports concerning its

conflict of interest code, and whether designated employees may cease filing statements of economic interests. In addition, the agency sought advice on how it may terminate its conflict of interest code, once the agency ceased to exist. The requestor was advised that as long as the agency continued in existence, even if inoperable and nonfunctioning, the filing obligations imposed by the Act upon agencies with an effective conflict of interest code remain in effect. When the agency ceases to exist, it may cancel its conflict of interest code as of the date of its dissolution. A letter indicating this should be provided to the Commission, as the agency’s code reviewing body. A separate letter from the Commission’s Executive Director was issued, denying the agency’s request for relief as claimed under regulation 18751. The Executive Director’s letter concluded that the exemption under regulation 18751 is not potentially available to agencies once they have a conflict of interest code in effect.

Denise W. Lewis
Department of Corrections
Dated: October 9, 2003
File Number I-03-115

In general, physicians making medical treatment decisions do not make, participate in making, or use their official positions to influence a governmental decision. However, if a particular member of the management, board or staff of a medical facility in a community near a California Department of Corrections institution, who treats an inmate pursuant to a contract with the Department of Corrections, is serving in a staff capacity under regulation 18701(a)(2)(B), thus qualifying as a “consultant” under the Act, he or she would be required to comply with the disclosure provisions of the Act by filing a statement of economic interests.

Stephen P. Deitsch
City of Arcadia
Dated: September 22, 2003
File Number A-03-202

The City of Arcadia was told that its homeowner association review boards are not solely advisory and are subject to the Act’s conflict-of-interest disclosure and disqualification provisions.

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Gifts

William D. McMinn

Port of San Diego

Dated: December 12, 2003

File Number I-03-284

Meals purchased at restaurants for port commissioners are gifts, unless a specific exception applies. Since the commissioners have full disclosure under the agency's conflict of interest code, the meals are considered gifts even if the source of the gift does not have business before the Port of San Diego or even if the gift is provided outside the Port of San Diego's jurisdiction.

Honoraria

Jonady Hom Sun

Public Utilities Commission

Dated: December 16, 2003

File Number A-03-142

The travel of a commissioner for the Public Utilities Commission to Puerto Rico to speak at a utility workers' conference is considered "travel within the United States" under regulation 18950.1(a)(2), which exempts certain reimbursements of travel expenses from the Act's "gift" and "honoraria" prohibitions.

William Fulton

City of San Buenaventura

Dated: December 4, 2003

File Number A-03-278

If payments for instruction, speaking, and writing are received by an official in connection with the practice of a bona fide business, trade, or profession, the payments would not be prohibited.

Lobbying

Mark Greenberg

Pomona Valley Hospital

Medical Center

Dated: December 30, 2003

File Number A-03-289

A member of an organization will not qualify as a lobbyist employer or a \$5,000 filer by making regular dues or similar payments for membership

in a bona fide association, even if a portion of the dues or similar payments is used by the association to employ a lobbyist or make other payments to influence legislative or administrative action.

Mike Laidlaw

Government Strategies, Inc.

Dated: October 2, 2003

File Number A-03-206

A California registered lobbyist may make a contribution to the "Taxpayers Against the Governor's Recall" campaign since the committee is not controlled by an elected state officer or candidate.

Nola Werren

Research & Compliance Services

Dated: September 4, 2003

File Number A-03-188

Any lobbyist who registers for one legislative session, and was previously registered for a prior legislative session, is renewing his or her registration, not submitting a new registration.

Mass Mailing

Susan M. Schectman

Midpeninsula Regional Open Space District

Dated: November 5, 2003

File Number I-03-233

A book produced at public expense would be subject to the Act's mass mailing restrictions if the publisher and agency together distributed more than 200 copies within a calendar month by "mailing" those copies to the homes, places of business, or post office boxes of the purchasers.

Revolving Door

Kathy Lewis

Department of Education

Dated: December 5, 2003

File Number A-03-209

An employee of the Department of Education (DOE), soon to retire, sought advice as to whether she, as a contractor to a group of foundations, may be posted by this group to: 1) occupy a staff position with the Department of So-

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cial Services (DSS) which DSS has contracted out to the group; and 2) be assigned to an inter-agency task force to promote the involvement of DOE and other state agencies in a child welfare services system. The employee was advised that even though she is receiving compensation from DSS, since that compensation is for vacation time accrued while an employee of DOE and she has not performed any services for DSS over the 12-month period prior to separation from state service, DSS is not her former state agency employer and she is not prohibited by the one-year ban from communicating with or appearing before DSS. The employee was also advised that the permanent ban would not prohibit her from appearing in or representing DSS with respect to any judicial, quasi-judicial or other proceeding in which she personally and substantially participated while an employee of DOE, since the permanent ban does not apply when representing the State of California or any of its agencies. Finally, the employee was advised that neither the one-year or permanent bans would prohibit her from providing voluntary services as a board member of an entity which is a contractor with her former state agency employer. These bans only apply to appearances and communications for which a former employee receives compensation.

Gary Quiring
Department of Education
Dated: December 9, 2003
File Number A-03-272

A designated state employee will be subject to the permanent ban on "switching sides" in a proceeding if he takes outside employment servicing a contract which he monitored while in state employment. The letter also contains a general discussion regarding the prohibitions imposed by the one-year ban on a public official's appearance before the state agency that previously employed him.

The Honorable Roger D. Randall, Retired
San Luis Obispo Superior Court
Dated: December 4, 2003
File Number A-03-261

A judge who is retiring in December 2003, but expects to serve at least 30 days during 2004 by assignment, is advised to continue to file annual statements of economic interests.

Jonna A. Ward
Dept of General Services
December 22, 2003
File Number A-03-283

The Act regulates the conduct of public officials and former public officials. It does not restrict a business's ability to bid on a specific contract. However, the permanent ban prohibits a former state employee ("consultant") from being paid to act as an agent or attorney for or otherwise represent the business in the procurement process. The permanent ban does not apply to a "new" proceeding even in cases where the new proceeding is related to or grows out of a prior proceeding in which the official previously participated. Generally, proceedings to draft a contract are different from proceedings involving *implementation* of the same contract, or amendment to the plan or agreement. Thus, once awarded, the permanent ban prohibition would not apply if the implementation is a new proceeding. However, the one-year ban may still apply.

Dennis G. Boom
Franchise Tax Board
Dated: November 17, 2003
File Number I-03-157

A former employee of the Franchise Tax Board was advised that the one-year ban does not prohibit him from immediately making software sales, or offering technical or management services, to state agencies other than the FTB; however, the permanent ban would prohibit him from doing so if he would be representing any person, other than the State of California, in a proceeding in which he formerly participated while in state service. The former official was also advised that the post-employment provisions of the Act do not bar his acceptance of employment with a private company doing business with the state, provided that he does not appear or communicate with the FTB for one year (except to fulfill the terms of an existing contract) and, pursuant to the permanent ban, does not accept assignments which would involve him in proceedings in which he formerly participated while in state service.

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Thomas A. Willis
CA Public Utility Commission
Dated: November 7, 2003
File Number A-03-198

A former legal advisor to the California Public Utility Commission (CPUC) sought advice as to whether the one-year prohibition under the Act's post-employment provisions barred her from representing her new employer in proceedings before the CPUC's administrative law judges. The former official was advised that the one-year ban in section 87406 explicitly excludes appearances before an administrative law judge from the definition of prohibited "appearances." Thus, she was advised that she may represent her new employer in proceedings before the CPUC's administrative law judges.

Kerry Mazzoni
Office of the Secretary for Education
Dated: November 14, 2003
File Number A-03-250

A discussion of the "revolving door" rules of the Act as they apply to a member of the Governor's cabinet. If the former officer's new employer is the State of California, including a University of California campus, the officer will not be subject to the revolving door rules of the Act in representing the state.

Robert A. Laurie
CA Energy Commission
Dated: October 15, 2003
File Number A-03-190

Because a former member of the California Energy Commission exercised discretion in granting petitions to intervene in proceedings involving an application for certification of a thermal power plant prior to his resignation from the commission, he took part personally and substantially through decision, as that phrase is used in Government Code § 87400(d), and "participated" in the proceeding for purposes of the Act. Therefore, he could not represent the applicant before the California Energy Commission for compensation, and may not provide any consultation, advice or assistance to the applicant in connection with its application for certification.

Richard L. Friedman
Department of Housing & Community Development
Dated: October 30, 2003
File Number A-03-216

The revolving door provisions apply to individuals, not business entities. A former designated employee is prohibited under the one-year ban from appearing before or communicating with his former department. However, provided he does not violate the one-year ban, he is not prohibited from participating in a new proceeding of the project on which he previously worked.

Statement of Economic Interests

Supervisor Pat Paul
Stanislaus County
Dated: October 21, 2003
File Number I-03-218

This county official was advised how to amend her prior year's annual statement of economic interests to report a gift of travel received during the year.

